80-1010

Supreme Court, U.S.
FILED
DEC 19 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO._____

P.W.CURREY AND MRS. JAMES D. CURREY
d/b/a CURREY & CURREY
a/k/a CURREY, SHIELDS & CURREY,
Petitioners,

VERSUS

CORPORATION COMMISSION OF THE
STATE OF OKLAHOMA, et al.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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December, 1980

QUESTION PRESENTED

May the State of Oklahoma regulate oil and gas exploration operations conducted on restricted Indian lands within its borders?

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

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STATE OF OKLAHOMA

PARTIES TO PROCEEDINGS BELOW

Petitioners are P. W. Currey and Mrs. James D. Currey who, at all material times, were members of or successors to a partnership doing business as Currey & Currey and also known as Currey, Shields & Currey.

Respondents are the Corporation Commission of the State of Oklahoma and its Director of Conservation, Dan R. Dunnett.

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OFFICIAL REPORT OF OPINIONS BELOW

This Opinion of the Supreme Court of the State of Oklahoma is officially reported as P. W. Currey et al. v. Corporation Commission of Oklahoma et al., Okl., 617 P. 2d 177 (1980).

JURISDICTION

On January 10, 1978, the Corporation Commission of the State of Oklahoma issued its Findings of Fact and Conclusions of Law, together with an Order, the contents of which are attached as "Appendix A". An appeal from the Order was filed in the Supreme Court of Oklahoma (Appendix B). The initial Opinion of the Supreme Court of the State of Oklahoma (Appendix C) was issued June 12, 1979. A Petition for Rehearing was filed in a timely manner (Appendix D). A "Correction Order" of the Supreme Court of the State of Oklahoma (Appendix E) was issued September 22, 1980, simultaneously with its Order Denying Petition for Rehearing attached as "Appendix F".

Jurisdiction is invoked under the provisions of 28 U.S.C. Sec. 1257 (3), by reason that (1) the statutes of the State of Oklahoma, to the extent that the Corporation Commission is vested with jurisdiction to regulate oil and gas exploration on restricted Indian lands, are repugnant to the constitution, laws and regulations of the United States and (2) Petitioner claims an immunity from State

action under the Constitution, laws and regulations of the United States.

PERTINENT CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS

These proceedings involve the application of Article 1, Section 8, clause 3, the "Commerce Clause", and Article 6, clause 2, the "Supremacy Clause" of the United States Constitution, quoted in pertinent part in "Appendix H". The federal statutory provisions involved are Pub.L. 83-280, c.505, Act of August 15, 1953, 67 Stat.590, Sections 6,7; Civil Rights Act of 1968, 82 Stat. 78 25 U. S. C. Sections 1321-1326; Pub.L. 80-336, Section 11, Act of August 14, 1947, c.459, 61 Stat. 731; and the "Oklahoma Enabling Act," Act of June 16, 1906, c. 3335, Section 1, 34 Stat. 267. The pertinent federal statutory provisions are cited in "Appendix I." Code of Federal Regulation provisions involved are found generally as 25 CFR, Part 1; 25 CFR, Part 183 (1954 Ed.) and 30 CFR Part 221 (1949 Ed.), pertinent sections of which are attached as "Appendix J."

Applicable Oklahoma constitutional and statutory provisions are as follows: the "disclaimer" provisions of Article 1, Section 3, Oklahoma Constitution, attached as

"Appendix K;" statutes of authority of the Corporaiton Commission as found in Title 17, Oklahoma Statutes 1971, Sections 51-53; Title 52, Oklahoma Statutes 1971, Sections 243 and 273; and the Oklahoma 1971 "Codification" statute found at Title 75, Oklahoma Statutes 1971, Section 184; pertinent portions of the statutes are attached as "Appendix L."

STATEMENT OF THE CASE

Petitioners, a Texas partnership, obtained leased rights to certain restricted Choctaw lands located in Stephens County, Oklahoma in the early 1950's. The lease was obtained through the Bureau of Indian Affairs ("BIA") a bureau of the Department of Interior, and granted Petitioners the right to explore for oil and gas. Upon execution of the lease and the posting of required surety, BIA turned the supervision of the exploration activities to the United States Geological Survey ("USGS"), also a subdivision of the Department of Interior.

Petitioners entered the lands pursuant to the lease and drilled three (3) wells, at all times complying with the regulations and under the supervision of USGS.

In the mid 1950's, each of the wells were the subject of a "Notice of Intent to Abandon", which notice contained a description of the method by which Petitioners intended to "plug" the wells. The plugging methods were approved by USGS. The wells were plugged and the fact and method of the abandonment were duly reported to and approved by USGS.

The plugging of each of the three (3) wells complied in all respects with the applicable USGS regulations. Following the abandonment of the wells, USGS inspected the well sites, approved the plugging and surface restoration and recommended to BIA that Petitioners bond be released. Petitioners were thereafter released by BIA.

In 1974, one of the wells experienced a "surface break out". Attempts by third parties (not parties here or below) to replug the well were unsuccessful and, in 1976, a representative of the Corporation Commission inspected the site and filed his complaint with the Commission. A second well was made the subject of a complaint later in 1977.

Notice of the complaints was given to Petitioners and a hearing was conducted by a Corporation

Commission trial examiner. Neither the Indian landowner nor the Department of Interior appeared as or were made parties to the hearing.

Petitioners answered the Complaint inter alia denying the jurisdiction of the Corporation Commission to impose requirements upon Petitioners because Petitioners were subject to federal not state regulation. The trial examiner and, subsequently, the Corporation Commission noted the objection to jurisdiction of Petitioners, but found jurisdiction (Appendix A, paragraph 2,3). The Corporation Commission entered its Order directing Petitioners to enter the lease and replug the wells.

Appeal from the Order was taken to the Supreme Court of Oklahoma by Petition in Error asserting inter alia the failure of Commission jurisdiction over oil and gas exploratio. on restricted Indian land. (Appendix B, paragraph 5.a.1).

The Supreme Court of the State of Oklahoma affirmed the Commission's finding of jurisdiction. (Appendix C). The Court, in summary, held (1) that Oklahoma's constitutional "disclaimer (Art. 1, Section 3, Appendix K) affected "proprietary" rather than governmental interests, relying on Organized Village of

Kake v. Egan, 1962, 82 S.Ct. 562, 369 U.S. 60, 7 L.Ed 2d 573, and (2) that the language of permissive assumption of jurisdiction in Pub. L. 83-280, Section 6, Act of August 15, 1953, 67 Stat. 590, together with the provisions of Pub. L. 80-336, Act of August 14, 1947, c. 459, 61 Stat. 731, permitted the Corporation Commission to exercise its regulatory authority to Indian lands. Concluding, the Court said:

* * * * *

> We hold that the power of the Corporation Commission to regulate oil and gas conservation measures under the laws of the state on restricted Indian lands and order appellant to replug purging wells, is not precluded by the federal jurisdiction. Our Constitutional mandate contained in O.S. 1971 Art. 1 Sec. 3 stating that Indian lands "shall be remain subject to the jurisdiction, disposal, and control of the United States", envisions undiminished and not exclusive jurisdiction. We so hold.

* * * * *

From that holding and affirmance of jurisdiction, Petitioners seek this Court's relief.

REASON FOR ALLOWANCE OF THE WRIT

THE OKLAHOMA SUPREME COURT HAS UNCONSTITUTIONALLY AND UNILATERALLY IMPOSED ITS REGULATORY LAWS UPON INDIAN LANDS WITHIN ITS BORDERS IN DEROGATION OF ASSIGNED STATE JURISDICTIONAL LIMITS AND IN CONFLICT WITH FEDERAL PLENARY AND PREEMPTIVE AUTHORITY.

Petitioners seek this Court's relief in vacating the holding of the Oklahoma Supreme Court affirming the Corporation Commission's unilateral assumption of jurisdiction over oil and gas operations on Indian lands within its borders.

Relying upon the same authority as did the Arizona Supreme Court in McClanahan v. Arizona Tax Commission, infra, the Oklahoma Court excised itself from the historical position taken by this Court in deciding state-federal jurisdictional litigation regarding Indian land. The narrow issue in McClanahan, 1973, 93 S.Ct. 1257, 411 U. S. 164 at 168, 36 L.Ed. 2d 129 at 133, was whether a State may tax a reservation Indian for income earned exclusively on the reservation. The narrow issue presented here is whether a State may impose its

conservation measures upon Indian lands in face of pervasive federal regulation on the same subject.

Petitioners do not claim that they are subject to no regulation. They do not claim that neither the Indian landowner nor his trustee, the United States government, is without remedy to correct any perceived conditions which allegedly exist. What Petitioners do claim is that, given the abundant expressions of this Court of federal exclusivity and preemptive regulatory supremacy of Indian land use and control, Petitioners are not required to respond to both State and federal regulation with respect to their lease obligations. Particularly is this so where, as found below, the regulations of both federal and State agencies are identical. In this connection, it is helpful to recall that, while federal regulatory agencies were aware of the proceedings below, no appearance by the federal agency or the Indian landowner precipitated or gave vicarious support to the position of the State of Oklahoma.

Petitioners respectfully suggest that this Court put at final rest the propensity of the several States to rely upon the expressions of this court in Organized Village of Kake v. Egan, 1962, 82 S.Ct. 562, 369 U.S. 60, 7 L.Ed. 2d

573, expressions which admittedly this Court has attempted to limit or place in perspective in subsequent opinions. Eg., McClanahan, supra, 411 U.S. 176, n. 15; Warren Trading Post v. Arizona Tax Commission, 1965, 85 S.Ct. 1242, 380 U.S.685, 14 L.Ed 2d 165; Mascalero Apache Tribe v. Jones, 1973, 93 S.Ct. 1267, 411 U.S. 145, 36 L.Ed 2d 114.

It is abundantly clear that when courts speak of "Indian land," no real distinction is made between tribal lands, trust lands or alloted lands. Indian lands are, simply, Indian lands. Historically and in present practice, Congress has constitutionally exercised plenary jurisdiction over Indian lands, U. S. Const., Art. I, Sec.8, clause 3, whether under a concept of exclusivity Worchester v. Georgia, 6 Pet. 515, 8 L.Ed 483 (1832), or, more recently, under a notion of preemptive regulation. Bryan v. Itasca County, 1976, 96 S.Ct. 2102, 426 U.S. 373, 48 L.Ed. 2d 710. Indeed, in Santa Rosa Band of Indians v. Kings County (CA9) 532 F. 2d 655 (1975), the Ninth Circuit said at 658:

* * * *

> At the outset, we emphasize that this suit involves an attempt to regulate Indian use of Indian trust lands. We are clear, regardless of the modification worked in the exclusive Federal

jurisdiction and tribal sovereignty doctrines of Worchester v. Georgia, 31 U.S. (6 Pet. 515) 350, 8 L.Ed. 483 (1832), by subsequent Court decisions such as Organized Village of Kake v. Egan, 369 U.S. 60, 82 S.Ct. 562, 7 L.Ed.2d 573 (1962) and Williams v. Lee, 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959), that in any event any concurrent jurisdiction the states might inherently have possessed to regulate Indian use of reservation lands has long ago been preempted by extensive Federal police and legislation. (Citations omitted).

That the federal government has exclusive authority "to deal with, control and protect the property of the Indian, where not expressly abandoned, is no longer open to controversy." Tiger v. Western Investment Co., 1911, 31 S.Ct. 578, 221 U.S. 286, 55 L.Ed. 738

I

THE OKLAHOMA ENABLING ACT AND SUBSEQUENT LAWS PRECLUDE ASSUMPTION OF STATE JURISDICTION.

In the Oklahoma Enabling Act, Act of June 16, 1906, 34 Stat. 267-278, Congress conditioned Oklahoma's statehood upon a disclaimer of jurisdiction over Indian lands, requiring that the new State include the following language in its Constitution:

* * * Provided, that nothing contained in said constitution shall be construed to . . . limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property or other rights * * * (34 Stat. 267).

Oklahoma complied with that condition precedent to

statehood in Art. 1, Sec. 3 of its constitution. Parenthetically, the Enabling Act affecting Oklahoma also enabled the new states of Arizona and New Mexico to join the Union, subject to the same disclaimer conditions. Act of June 16, 1906, supra; Sec. 25, Second; Williams v. Lee, 1959, 79 S.Ct. 269, 358 U.S. 217, 3 L.Ed 2d 251, n. 10 at 358 U.S. 222 (Arizona); Mescalero Apache Tribe v. Jones, 1973, 93 S.Ct. 1267, 411 U.S. 145, 36 L.Ed 2d 114 at 411 U.S. 149 (New Mexico).

The Supreme Court of the State of Oklahoma has acknowledged and given its own meaning to the effect of their State's Constitutional limitations with respect to Indian lands. It has held, variously, that Oklahoma must look solely to the acts of Congress with respect to restrictions on Indian lands, F.B. Collins Inv. Co. v. Beard, 46 Okl. 310, 148 P.846, 850 (1915); that the plenary authority of Congress to legislate for Indian lands cannot be impaired by Oklahoma, State v. Huser, 76 Okl. 130, 184 P. 113 (1919); that the cession of jurisdiction to the federal government was not restricted, but absolute, Franz v. Autry, 18 Okl. 561, 91 P. 193 (1907); that where a conflict exists between state and federal authority, state law is superceded, Mashunkashey v. Mashunkashey, 191 Okl.

501, 134 P.2d 976 (1943). See also Cockran v. Teehee, 40 Okl. 388, 138 P. 563 (1914); Scioto Oil Co. v. O'Hern, 67 Okl. 106, 169 P. 483 (1917). Moreover, the Oklahoma Legislature, in making its decennial codification of statutes, maintains the disclaimers. 75 O.S. 1971 Sec. 184. Perhaps, the historical attitude of the State of Oklahoma can be summed in the language of Mashunkashey v. Mashunkashey, supra, 191 Okl. 505:

> We have referred to state and federal authorities outlining the policy and purpose of the law with respect to the lands and property of the Indians. None of these authorities discloses an inclination to limit in any degree the broad and comprehensive powers reserved to the federal government by the all-inclusive language of section 1 of the Enabling Act. Specifically, the power reserved was the power to make any law or regulation which it would have been competent to make "if this act had never been passed." Prior to statehood, the power of Congress to legislate with respect to the Indians, their lands and property, was plenary. This plenary power was fully preserved to the Congress by the Provisions of the Enabling Act and the acceptance of said provisions by the people of this state. (Emphasis added).

In face of the historical expressions of the Oklahoma judiciary, the Oklahoma Supreme Court now states, relying on Organized Village, supra,

* * * *

> Oklahoma's disclaimer of right and title to Indian lands is a disclaimer of proprietary rather than governmental interests.

* * * *

The Oklahoma Court ignored, however, what this Court was required to restate in McClanahan, supra, 411 U.S. 176, note 15:

* * * *

> * * * In (Organized Village of Kake v. Egan), we held that "'absolute'" federal jurisdiction is not invariable exclusive jurisdiction," and that this language in federal legislation did not preclude the exercise of residual state authority. See (369 U.S. 68, 7 L.Ed. 2d 573). But that holding came in context of a decision concerning the fishing rights of nonreservation Indians. See (369 U.S. 62, 7 L. Ed. 2d 573). It did not purport to provide guidelines for the exercise of state authority in areas set aside by treaty for the exclusive use and control of Indians. (Emphasis by the Court).

* * * *

Nor did the Oklahoma Court look to the impact of McClanahan upon the disclaimer language of the Arizona Enabling Act, identical to that of Oklahoma (McClanahan, supra, commencing at 411 U.S. 174):

* * * *

> It is circumstances such as these which have led this Court in interpreting Indian treaties, to adopt the general rule that "(d)oubtful expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith." Carpenter v. Shaw, 280 U.S. 363, 367 74 L. Ed. 478, 50 S. Ct. 121 (1930). When this canon of construction is taken together with the tradition of Indian independence described above, it cannot be doubted that the reservation of certain lands for the exclusive use and occupancy of the Navajos and the exclusion of non-Navajos from the prescribed area was meant to establish the lands as within the exclusive sovereignty of the Navajos

under general federal supervision. It is thus unsurprising that this Court has interpreted the Navajo treaty to preclude extension of state law -- including state tax law -- to Indians on the Navajo Reservation. See Warren Trading Post Co. v. Arizona Tax Comm'n 380 U.S. at 687, 690, 14 L. Ed. 2d 165; Williams v. Lee, supra, at 221-222, 3 L. Ed. 2d 251.

Moreover, since the signing of the Navajo treaty, Congress has consistently acted upon the assumption that the State lacked jurisdiction over the Navajos living on the reservation. (Footnote 13 by Court). Thus, when Arizona entered the Union, its entry was expressly conditioned on the promise that the State would "forever disclaim all right and title to which shall have been acquired through or from the United States or any prior sovereignty, and that until the title of such Indian or Indian tribes shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States. Arizona Enabling Act, 36 Stat.557, 569. (Footnote omitted)

Nor is the Arizona Enabling Act silent on the specific question of tax immunity. The Act expressly provides that "nothing herein, or in the ordinance herein provided for, shall preclude the said State from taxing as other lands and other property are taxed any lands and other property outside of an Indian reservation owned or held by an Indian." Id. at 570 (emphasis added). It is true of course, that exemptions from tax laws should, as a general rule, be clearly expressed. But we have in the past construed language far more ambiguous than this as providing a tax exemption for Indians. See, e.g., Squire v. Capoeman, 351 U.S. 1, 6, 100 L. Ed. 883, 76 S. Ct. 611 (1956), and we see no reason to give this language an especially crabbed or restrictive meaning. (footnote 15 by Court, quoted supra).

* * * *

Footnote 13 is quoted for convenience as follows:

* * * *

13. "Congress has . . . acted consistently upon the assumption that the States have no power to regulate the affairs of Indians on a reservation. . . . Significantly, when Congress has wished the States to exercise this power it has expressly granted them the jurisdiction which Worcester v. Georgia had denied." Williams v. Lee, 358 U.S., at 220-221, 3 L. Ed. 251 (footnote omitted).

* * * *

If Organized Village can be said to stand for any proposition relevant here -- since the case did not involve state regulatory jurisdiction over Indian lands -- it can only be used as a summary of all criteria, the absence of which must exist before a state may assert such jurisdiction. By way of summary, state jurisdiction over Indian lands under the guise of regulatory authority cannot exist:

1. If state action infringes upon the right of Indians to make their own laws;

2. If there exists a treaty obligation excluding state authority;

3. If there is an impairment of federal law or regulation;

4. If Congress has reserved regulatory authority to itself; or

5. If there exists any legal impediment to the state law prohibiting it.

Illustrative of the fact that the U.S. Supreme Court

has not tended to relax restrictions against state regulatory power since Organized Village are the following expressions of what state may not do in a regulatory capacity as against Indian lands (reminding this Court that Organized Village concerned itself with non-Indian lands):

1. The State of Arizona could not impose a tax on gross proceeds of sales to Indians on an Indian reservation. Warren Trading Post Co. v Arizona Tax Commission, supra. Again, note that Arizona has the same disclaimer requirement as does Oklahoma.

2. The State of New Mexico could not impose a use tax on personalty installed in the construction of ski lifts by Indians even though the lift was on off-reservation land. Mescalero Apache Tribe v. Jones, supra. The State of New Mexico has the same disclaimer requirement as does Oklahoma and Arizona. Additionally, Mescalero Apache Tribe limits the effect of Organized Village to "off-reservation activities." 411 U.S. 153, 36 L. Ed. 2d 122.

3. The mere fact that land is allotted does not terminate federal supervision of Indian Country. Mattz v. Arnett, 1973, 93 S.Ct. 2245, 412 U.S. 481, 37 L. Ed. 2d 92.

4. Only where Congress clearly terminates its supervisory status does a state assume jurisdiction. DeCoteau v. District Court, 1975, 95 S.Ct. 1082, 410 U.S. 425, 43 L. Ed. 2d 300, reh den. 95 S. Ct. 1667, 421 U.S. 939, 44 L. Ed. 2d 95.

5. Where Congress has vested jurisdiction over adoption preceedings of reservation Indians in a tribal court, a state may not assert jurisdiction since the overriding federal policy defeats that assertion. Fisher v. District Court, 1976, 96 S.Ct.424 U.S. 382, 943, 47 L. Ed. 2d 106, reh. den., 96 S. Ct. 1524, 425 U.S. 926, 47 L. Ed. 2d 772.

6. The State of Montana could not tax personal property located on a reservation, or require a cigarette vendor's license or collection of sales tax for products sold to on-reservation Indians. Moe v. Salish & Kootenai Tribes, 1976, 95 S. Ct. 1634, 424 U.S. 463, 48 L. Ed. 2d 96. Montana is also a disclaimer state.

Such language does not bespeak of limitations of the Oklahoma disclaimer to a mere "proprietary" interest as the Oklahoma Supreme Court states in this instance. The court below improperly relied upon Organized Village, supra, for its implied assertion that the Enabling Act

disclaimer is now something less than what it was immediately after Statehood. Having done so, the Oklahoma Court has invaded traditional federal sovereignty.

II

THE STATE OF OKLAHOMA HAS NOT ASSUMED JURISDICTION ON RESTRICTED INDIAN LANDS

The opinion issued by the Oklahoma Supreme Court, by way of summary, reasoned (1) that the disclaimer provisions of the Oklahoma Constitution applied to "proprietary" powers and not political or police power; (2) that Pub. L. 83-280, (hereafter Pub. L. 280), 67 Stat. 588 (1953) (and its successor Civil Rights Act of 1968) empowered a state, without more, to enlarge its jurisdiction to Indian lands to the same extent as the federal governments withdrew its jurisdiction; and (3) that Congress, in requiring a State to "amend" its constitution or statutes, only imposed such an obligation to do that affirmative act "where necessary," that is, where the constitution or statutes pose impediments to assumption of sovereignty.

An analysis of the general relinquishment of federal jurisdiction over restricted Indian lands, through State

consent, was treated extensively in Kennerly v. District Court, 1971, 91 S. Ct. 480, 400 U.S. 423, 27 L. Ed. 2d 507. By way of summary, the U. S. Supreme Court limited the application of Pub L. 280, extending criminal jurisdiction extending civil jurisdiction to the five states enumerated. Montana (as Oklahoma) was not an enumerated State. Said the Court, at 400 U.S. 424, 425:

* * * *

> "Prior to the passage of Title IV of the Civil Rights Act of 1968, 82 Stat. 78, 25 U.S.C. Sections 1321-1326 (1964 ed., Supp. V) . . . state assumption of civil jurisdiction -- was governed by Section 7 of the Act of August 15, 1953, 67 Stat. 590.

Section 7 of that statute provided:

> 'The consent of the United States is hereby given to any other state not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act (referring to Sections 2 and 4, see n. 1, supra), to assume jurisdiction at such time and in such a manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof.' (Emphasis added).

* * * *

The Kennerly Court, faced with an action to enforce a debt incurred within the boundaries of the Blackfeet Reservation by members of the tribe, noted that the Montana legislature, by legislative enactment, had extended criminal, but not civil, jurisdiction over the lands of the Flathead tribe,

* * * *

"But Montana never took 'affirmative legislative action' -- concerning either civil or criminal jurisdiction -- with respect to the Blackfeet Reservation."

* * * *

The Blackfeet tribe, however, had adopted as part of its tribal law an enactment which, unilaterally, granted the State concurrent jurisdiction with the tribal courts over civil suits. Hence, the Kennerly Court was faced with Pub. L. 280.

In discussing the necessity of State "affirmative legislative action" to extend its jurisdiction over Indian lands, the Kennerly Court stated, 400 U.S. 427:

* * * *

"Nor was the requirement of affirmative legislative action an idle choice of words; the legislative history of the 1953 statute shows that the requirement was intended to assure that state jurisdiction would not be extended until the jurisdiction to be responsible for the portion of Indian country concerned manifested by political action their willingness and ability to discharge their new responsibilities." (Emphasis added).

* * * *

Nor did the pre-1968 tribal action constitute the requisite consent required under the Civil Rights Act of 1968, 25 U.S.C. Sections 1321-1326. Said the Court, 400 U.S. 428:

* * * *

Title IV of the 1968 statute repealed Section 7 of the 1953 Act (Pub. L. 280, supra) and substituted a new regulatory scheme for the extension of state civil and criminal jurisdiction to litigation involving Indians living in Indian country."

* * * *

The provisions of the 1968 Act, Pub. L. 90-284, Title IV, Sections 402, 404, 82 Stat. 79 (April 11, 1968), 25 U.S.C. Sections 1321, 1324, enabled a state to assume civil jurisdiction upon the occurrence of two contingencies: (1) "consent of the tribe occupying the particular Indian country or part thereof," 25 U.S.C. Section 1321, and (2) amendments to constitutions and statutes for the removal of legal impediments, 25 U.S.C. Section 1324.

By way of summary, therefore, the assumption of State jurisdiction over restricted Indian lands in Oklahoma must, according to Kennerly, supra, have come about in one of two ways if the 1953 and 1968 congressional enactments are to furnish a basis of jurisdiction:

1. If assumed under authority of Pub. L. 280 such assumption of jurisdiction must flow from "affirmative legislative action" of the State of Oklahoma; or

2. If assumed under authority of the Civil Rights

Act of 1968, such assumption must be preceeded by the electoral consent of Choctaw tribe and the affirmative assertion of jurisdiction of the State.

There is nothing in the record nor has research developed the criteria precedent to the Corporation Commission's assumption of jurisdiction over oil wells on Indian land. Requisite consent of the Choctaw tribe is not evident in the record below and none is believed to exist. Legal research has uncovered no "affirmative legislative action" wherein the State of Oklahoma " manifested by political action (its) willingness and ability to discharge their new responsibility." Kennerly, supra, 400 U.S. 427. Assuming this discussion to be a accurate reflection of the law, then it follows that the restrictions of Oklahoma law impose more than a mere proprietary disclaimer, but an unqualified constitutional impediment. Okla. Const. Art. I, Section3.

III

PUB. L. 80-336 TRANSFERS NO FEDERAL JURISDICTION TO THE CORPORATION COMMISSION IN VIEW OF EXISTING FEDERAL OIL AND GAS REGULATIONS AND ABSENCE OF FEDERAL APPROVAL OF ORDERS.

The Oklahoma Supreme Court cited no authority wherein Congress has yielded to the Oklahoma Corporation Commission an independent power to regulate oil and gas exploration activities on Indian lands except that which may be said to exist in the provisions of Pub.L. 80-336, c.459, Sec.11, Act of August 4, 1947, 61 Stat. 731:

* * * *

> All restricted lands of the Five Civilized Tribes are hereby made subject to all oil and gas conservation laws of Oklahoma: Provided, that no order of the Corporation Commission affecting restricted Indian land shall be valid as to such land until submitted to and approved by the Secretary of the Interior or his duly authorized representative. (Emphasis original)

* * * *

A condition precedent, however, to the application of Oklahoma law is the approval of the Secretary of the Interior. The Court below entirely disregarded the regulations of the Department of Interior which specifically preclude the application of State or local law with respect to the regulation of Indian lands. 25 CFR Part 1 Sec.1.4(2):

* * * *

> (a) Except as provided in paragraph (b) of this section, none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or

controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property, leased from or held or used under agreement with and belonging to any Indian or Indian tribe, band, or cummunity that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. (30 Fed. Reg. 7520 (June 9, 1965).

* * * *

Moreover, the record below does not reflect and there is not known to be an application by the Corporation Commission to the Interior Department for an approval of its Order in this case. The Department of Interior, however, knew of the pending action before the Commission; the District Engineer for USGS testified at the hearing (Appendix A, para 25). The Findings of Fact of the Commission reflect that, at all stages of their activities, Petitioners complied with all federal regulations, both regulations of BIA and USGS, and were released from federal obligations under the lease. (Appendix A, paras. 25-36; See Appendix J for regulations under which Petitioner was bound).

In short, the abundant and pervasive regulatory scheme adopted and exercised by the Department of Interior has pre-empted whatever authority the Corporation Commission may have had under

Pub.L.80-336, supra. Bryan v. Itasca County, supra. The Corporation Commission's order to Petitioners to enter into Indian land and to perform acts with respect to that land is an invalid invasion of the exclusive domain of federal authority Northern Natural Gas Co. v. State Corporation Commission of Kansas, 1962, 83 S. Ct. 646, 373 U.S. 84, 9 L.Ed 2d 601, reh. den. 83 S.Ct. 1011, 371 U.S. 960, 10 L.Ed 2d 14, an authority upon which Petitioners were entitled to rely.

By way of summary, Petitioners contend that, having submitted to and complied with federal regulatory requirements imposed to date, they should not be subject to Oklahoma jurisdiction. Petitioners state that the body of law recited above -- indeed, the body of legal history left uncited because of limitations of space -- make clear that the State of Oklahoma has entered upon a course of enforcement which it is constitutionally unable to do, assuming a power of regulation clearly given to and yet retained by the federal government and invading, without authority of law, the preempted field of federally regulated concerns. Petitioners may well be subject to the same order from federal authority; they may well be subject to landowner action; they cannot be, given the

status of the law, subject to actions by the State of Oklahoma.

CONCLUSION

Given the extensive oil and gas exploration activities required to meet national energy needs, the relative role of state and federal government in regulating the nature and manner of such activities on Indian lands must be clearly defined.

To Petitioners' knowledge, this Court has never expressed itself as to the extent, if any, to which a State may assume regulatory authority for development of minerals located on Indian lands. Hence, Petitioners present a case of new impression.

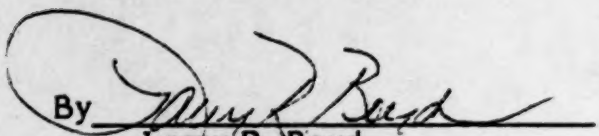
Moreover, while this Court has spoken to a need for affirmative action by disclaimer States to assume civil and criminal jurisdiction under Pub. L. 280 and the 1968 Civil Rights Act, it is clear from the rather cursory treatment of Petitioner's cause by the court below that this court should once again express itself to (1) the manner by which federally imposed and required state constitutional disclaimers may be removed, (2) the extent

to which a removal permits States to assert its police power and other regulatory schemes and (3) the conflict between apparent delegations of federal authority over Indian lands in the nature of Pub. L. 80-336 and the pervasive federal regulations affecting both State and federal interests.

Petitioners pray, therefore, that this Court grant their Petition and, upon review of the merits, reverse the decision below.

Respectfully submitted,

WESNER COKE & BOYD

By 

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Attorney for Petitioners

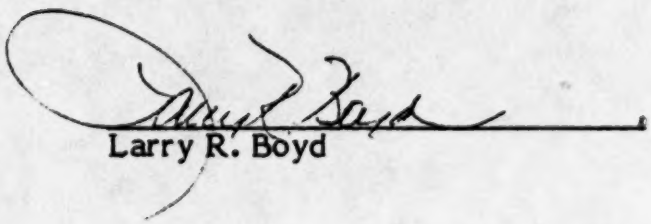
CERTIFICATE OF SERVICE BY MAIL

On the 19th day of December, 1980, I, Larry R. Boyd, a member of the Bar of the State of Texas and of the Supreme Court of the United States, certify that, in accordance with Rule 28.3 of the Rules of the Supreme

Court, mailed to the following named counsel of record below, at the addresses shown, three (3) copies of the foregoing Petition for Writ of Certiorari to the Supreme Court of the State of Oklahoma, by depositing the same in a United States mailbox, first class postage prepaid:

Corporation Commission of Oklahoma
by serving:
Harvey Cody, Attorney
Oil and Gas Conservation Division
Oklahoma Corporation Commission
Jim Thorpe Office Building
Oklahoma City, Oklahoma 73105

Attorney for Respondents



Larry R. Boyd

APPENDIX A

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

COMPLAINT OF DAN R. DUNNETT, DIRECTOR OF CONSERVATION, FOR AND ORDER REQUIRING Curry & CURRY TO PLUG WELLS LOCATED IN THE SW/4 NW/4 NW/4 OF SECTION 10, TOWNSHIP 3 SOUTH, RANGE 5 WEST, STEPHENS COUNTY, OKLAHOMA.	)	CAUSE P.D.NO.8236
	)	ORDER NO. 137283

REPORT OF THE COMMISSION

This cause came on to be heard before Don B. Edinger, Acting Trial Examiner for the Corporation Commission of Oklahoma on the 26th day of April, 1977, in the Commission's courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the Rules of the Commission for the purpose of taking testimony and reporting to the Commission. The cause was originally set for the 19th of April, 1977.

Mr. Nathan Sherman, Assistant Conservation Attorney, appeared for the Complainant, Dan R. Dunnett, Director of Conservation; Mr. Manville Buford, Attorney, appeared for the Respondent, Curry & Curry; Mr. John Robertson, Attorney, appeared for Continental Oil Company; Mr. John Robertson, Attorney, appeared for Continental Oil Company; Mr. Charles W. Nease, District Engineer, appeared for the U.S. Geological Survey.

The Trial Examiner proceeded to hear the cause and filed his report recommending the Complaint be granted. Within the time permitted, Exceptions were filed by Respondent, Curry & Curry, and were argued before the Commission on the 12th day of September, 1977, at the conclusion of which, the cause was taken under advisment.

Now on this 10 day of January, 1978, the Commission being in regular session and after considering all the testimony and evidence introduced at said hearing and after hearing arguments and statements of counsel finds that the Report of the

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Trial Examiner should be adopted and in support thereof finds as follows:

FINDINGS

1. This is the Complaint of Dan R. Dunnett, Director of Conservation, for an order requiring Curry & Curry to plug wells located in the SW/4 NW/4 NW/4 of Section 10, Township 3 South, Range 5 West, Stephens County, Oklahoma.

2. At the beginning of the hearing, Respondent stated that, although the Complaint covered only the Sophie Harrison B-2 Well located in the SW/4 NW/4 NW/4 of Section 10, Township 3 South, Range 5 West, Stephens County, Oklahoma, there were two additional wells located in the same section, namely the Sophie Harrison B-1 located in the SE/4 NW/4 NE/4 and the Sophie Harrison No. 1 located in the NW/4 NW/4 NW/4, which should be considered and that Respondent waived notice of publication and reserved the right to defend. It was so stepulated (sic). Respondent questions the jurisdiction of the Corporation Commission over the wells on the grounds that the wells were drilled on Choctaw Indian Land

as a result of a lease over which the United States of America had exclusive jurisdiction through the United States Geological Service.

3. The Commission finds that it has jurisdiction over the subject matter herein and notice has been given in all respects as required by law and the Rules and Regulations of the Commission.

4. It was the testimony of the District Manager that no intent to drill, completion report or intent to plug are on file with the Commission for these wells with the single exception of a plugging record for the Harrison 1-B Well which was filed on July 29, 1974. These wells were drilled by Curry, Shields and Curry. The District Manager's first inspection, after receiving notice of a purging well, was on March 12, 1976. At that time, casing was sticking out of the hole that had been placed there by Continental during efforts to plug the well. The location of the well was measured from the lease lines and the purging well was determined from the location listed on the 1954 scout report (165 feet from the west line and 4,455

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feet from the south line) to be the Sophie Harrison B-2 Well. The well was purging at the rate of about 45 barrels of salt water per day. Samples of the purging water were taken on March 12, 1976, and an analysis indicated 21,000 ppm total solids and 12,500 ppm chlorides. Since no records of this well were located in the Commission files, the District Manager called the U.S. Geological Survey for information. Their records indicated that the well had been plugged by placing five sacks of cement at the bottom of the hole, filling the hole with nine pound mud and then plugging at the surface with three sacks of cement.

5. The Sophie Harrison No. 1 Well was covered over and the well is not purging. No intent, completion report or intent to plug were filed with the Commission. The Sophie Harrison B-1 Well was not inspected. No intent or completion report were filed but a plugging report was filed with the Commission. This report indicates the well was plugged on July 20, 1954. It was reported that a wet area existed on the surface around the well.

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6. On cross examination, it was stated that according to the reports of the USGS, the Harrison B-2 Well had been plugged with five sacks of cement at the bottom and three sacks at the top. The USGS record indicates casing was left in the hole and Halliburton's records indicate that casing was cemented in the hole. Five sacks of cement in 5 1/2 inch casing would fill up the casing about 25 to 30 feet. Three sacks at the top would fill up about 15 feet of the casing; purging was not reported on this well after July, 1954, until reported by Continental some time prior to March 12, 1976.

7. Continental Oil Company has the adjoining lease on which there are secondary recovery operations. Shutting down the closest injection well on the Continental lease did not affect the purging. A March 8, 1976, letter from Continental to Sam Shakely, Manager Pollution Abatement, stated that the flow decreased only when the Short-Price and Swan injection well located southeast of the Harris 2-B Well was shut in. It was admitted that

secondary recovery operations exert pressure in the formations into which water is injected.

8. The District Manager admitted that plugging records could be lost or misplaced. Fieldmen, when witnessing a plugging, normally kept a record which was later turned in to the office. Mr. J. E. Burba, now retired, was the Field Inspector for the area at the time. Mr. Burba probably retained some of his records on retirement. Had Mr. Burba witnessed the plugging it would meet the District Manager's ,approval, but we have no record indicating that he had witnessed the plugging. At that time we had considerably fewer fieldmen. These men attempted to witness pluggings but often were unable to because of the work load. Since the name was typed on the reports, this could mean only that the work was done in the fieldman's area. If a well were plugged, cement should be found about three feet below the surface. The Corporation Commission did not find the cement plug.

9. When the Complaint on the Harrison 1-B was filed the witness reviewed the Complaint including

the copy of the plugging report which had been filed with the Commission. Mr. Burba's name was listed as the name of the Conservation Officer who witnessed the plugging, however, this did not mean that Mr. Burba witnessed the plugging but rather that the well was in Mr. Burba's area.

10. The Complaint indicates an area of about 30 feet in diameter is wet in the area of the Harrison B-1 Well.

11. The plugging report for the Harrison 1-B Well indicated ten sacks of cement were placed in the bottom, the well filled with mud and after setting, 3 sacks of cement placed in the top of the hole. This would have met the minimum requirements at the time and would comply generally with the custom and practice at the time. The witness could not tell if a sample of water was from either of the floods in the area.

12. The Field Inspector testified that on November 2, 1976, he found a well, later identified as the Harrison B-2 Well, purging salt water into a small pit. No record of intent to plug or a

plugging report for this well could be located in the Commission files. A USGS form, "Subsequent Report of Abandonment", had been forwarded to Duncan Office. According to this report, casing was left in the well, five sacks of cement placed in the bottom of the well and three sacks in the top. The USGS log of oil or gas wells indicates 940 feet of 5 1/2 inch casing was cemented in the hole. In the SE/4 NW/4 NW/4 NW/4 of Section 10, an area 30 feet in diameter soaked in salt water was found (B-1 Well location). About April 20, 1977, the Harrison No. 1 Well (NW/4 NW/4 NW/4 of Section 10), was found; no pollution was occurring.

13. On cross examination, the Field Inspector stated that he felt that the plug in the B-2 Well was not strong enough to withstand the pressures. The plug on the B-1 Well was not satisfactory but the plug on the Harrison No. 1 Well was. The separate records of plugging were kept by field inspectors and normally submitted to the office. If 5 1/2 inch casing were in the hole in the B-2 Well and 5 sacks of cement placed in the bottom hole

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filled with mud and 3 sacks placed in the top, the plugging would probably have been in compliance with the Rules. Waterfloods were in operation in 1954, and there has been reports of purging due to waterfloods. However, if a well were plugged properly, the plug should hold. The field inspector did not know if the current practices regarding plugging were in practice in 1954. There is no complaint as to the Harrison No. 1 Well.

14. The witness for Continental testified that Conoco had secondary recovery operations to the west in Section 8 and 9, Township 3 South, Range 5 West. Continental owns no interest in Section 10 and is interested in the Harrison B-2 Well only. Continental discovered a breakout in the Harrison B-2 Well and reported it. Continental attempted to plug the leak, as follows: Field foreman had pits dug and drilling rig rigged over the hole. The surface hole was about 12 inches in diameter, found hole by inserting a rod. Drilled to 250 feet, ran 2 inch tubing to bottom, pumped 125 sacks of cement an at 200 lbs. - achieved fill up. The water continued

to flow. In an attempt to find the old casing, a pit 25 feet deep was bulldozed around the location. Filled pit, drilled another hole, encountered cement and possibly old casing at 30 feet. Slipped off and continued to drill to 221 feet. Tubing run to 220 feet. Cement was circulated to surface but water continued at a rate of 35 - 50 barrels a day. Then 26 feet of 5 1/2 inch casing was shoved down over the tubing and the site leveled. Water was still produced. Ran 25 feet of 1 inch inside the casing and pumped in 100 gallons Western Flow Control which did not hold. The next day welded 5 1/2 inch to the 2 inch tubing and pumped Flow Control in; water continued to flow out tubing and around casing.

15. Continental hauls water off at the cost of $700.00 per month and has spent in the range of $40,000.00 on this well.

16. Injection into Continental's injection well No. 132, the closest injection well to this lease, was shut in and the flow from the B-2 Well neither ceased or slowed. Water injection into the

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Short-Price and Swan injection well located 1,700 feet south was shut down for awhile. The amount of water purging dropped from 60 to 45 barrels a day. When the well was started up again, about 6 days, purging water rose to 50 bbls. In mid July the water dropped to about 40 bbls. a day for no apparent reason.

17. Water analyses were made of waters from the Short-Price and Swan No. 1 injection well, an average sample of Continental injection water and the Harrison B-2 Well. The results are somewhat inconclusive although Continental engineers feel that the analyses inidicate that the purging water is not coming from their flood. It was also testified that the Loco Series was a single source of Supply made up of many stringers.

18. Mr. Fred A. Norris, Manager of Field Operations, presented the Rules in effect at the time of the plugging. The Rules state that a well must be plugged in such a manner that oil, gas, water or other substances shall be confined to the reservoir in which it originally occurred and that

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the open hole below the casing shoe shall be filled with mud or cement to a point 25 feet above the shoe. If impractical, a 25 foot plug may be set which plug shall extend at least 25 feet above the casing shoe. No surface casing shall be pulled unless authorized by the Conservation Officer, or by special order of the Commission. A plug or seal shall be placed at the surface in such a manner as to not interfere with soil cultivation.

19. It was further testified that as far as the B-2 Well is concerned, no Form 1002A, plugging report, or intent to drill form were filed with the Commission and that the Conservation Division is unable to state that the well is properly plugged. An incomplete plugging report but no intent to drill or Form 1002A are on file for the B-1 Well, while no records are on file for the No. 1 Well.

20. It was further testified that a large number of floods have been approved in this area over the years. The Price flood to the south for instance, is flooding the Loco Sand, a series of lenticular sands, at a depth of about 520 feet. The

B-2 Well was never perforated in this formation. If the 5 1/2 inch casing was cemented and left in the hole and cement placed in the bottom and the top according to the Rules, the plugging should hold against flood injection.

21. Normally, the field inspector sends his field record of plugging into the District Office. This record is compared with the report form submitted by the operator. If Mr. Burba had witnessed the plugging, however, he could have lost this field copy or could have taken it with him when he left the employ of the Commission. Mr. Burba was a competent employee and had he witnessed the plugging, it would have been done according to the Rules.

22. At the time of the plugging of the wells in question, the Corporation Commission had only some 22 field inspectors. Due to the work load, these men were not required to be on location for every plugging. They were to attempt to witness as many of the pluggings as possible. The typed name on a plugging report, therefore, meant only that the

well was in an inspector's district and did not necessarily indicate that the plugging was witnessed, unless the inspector's signature was on the form.

23. An offset operator said there were several joints of pipe laying on the ground at the B-2 location about the time the plugging was supposed to have occurred. According to reports, no surface pipe had been set but the long string had been cemented in. It was also testified that the Rules did not state the amount of cement to be used in plugging and that plugging records although kept permanently could be lost or misfiled.

24. At that time, Mr. Burford, Attorney for the Respondent, demurred to the evidence and the Trial Examiner ruled the demerrer (sic) would be taken under advisement. After consideration of the testimony, the ruquest (sic) for demurrer is overruled.

25. Mr. Nease, USGS District Engineer, testified that he was familiar with all 3 wells. The USGS supervised oil and gas operations for the

Office of Indian Affairs on restricted Indian lands. It is their responsibility to see that leases are properly developed. The USGS requires an intent to drill be filed. An intent to drill was filed for all 3 wells in question. The procedure followed in 1956 was to check location of the well, review drilling program and approve application. Curry and Curry, operating out of Dallas, Texas, filed USGS completion reports for all 3 wells as follows: Well No. 1 on March 29, 1954; Well B-1 on August 4, 1954; Well B-2 on August 17, 1954. Their practice was to review these reports and if incomplete to return them to operator. These reports were not returned.

26. Another required form is an intent to abandon on which operator lists how the well is to be plugged. USGS checks with the completion report and decides whether or not the procedure is correct and if it is, it is approved. If not, USGS set the procedure. All 3 wells in question were approved.

27. Bureau of Indian Affairs requires a bond be posted based on lease size. Lease is issued only after bond is posted. All 3 wells in question were

on the same lease. When and if wells are properly plugged and surface restored, the USGS recommends to Bureau of Indian Affairs that the bond be terminated.

28. After application to abandon is approved, a representative of USGS is sent to witness the plugging. If not available, verbal permission is given. A subsequent report is filed stating how the well was plugged. This is compared with the approved application and if substantially different, it must be checked and approved; otherwise the report is disapproved, and may be required to replug. The subsequent report on all 3 wells was approved indicating all 3 wells were plugged in compliance with USGS rules. USGS states that as long as USGS requirements are met, the well is approved. State requirements are up to the operator. At the time in question, USGS minimum requirements were same as the State. USGS is not limited by these regulations and can impose additional regulations.

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29. A letter to the Bureau of Indian Affairs recommended the release of the Curry and Curry bond indicating requirements had been met. An on-site inspection of the premises to check surface restoration is always made. The inspection was made on the 3 wells in question.

30. Exhibit No. Il is an affidavit signed by B. G. Taylor, Vice-President of Halliburton Services dated April 19, 1977. The attached invoices indicate that Halliburton cemented the production string in the B-2 Well to a depth of 940 feet, acidized, fractured, set a bridge plug and perforated 333 - 334 with six shots and cemented to surface with 100 sacks.

31. The "Sundry Notice and Reports on Wel" indicates that as to the B-2 Well, the casing was left in the hole, five sacks of cement placed on the bottom hole filled with mud and 3 sacks of cement placed in the top to cover the hole. The form indicates this was done August 24, 1956, and that work was not witnessed. Sundry indicates that as to the 1-B Well, 40 feet of surface casing was set and

cemented to the surface. Ten sacks of cement pumped to the bottom; mud was used to fill the hole.

32. Admittedly, most of Oklahoma Corporation Commission required forms in this case were not filed with the Commission. Reports were filed with the U. S. Geological Survey. At the time of filing, the requirements of the USGS for completion and plugging were evidently the same as those of the Oklahoma Corporation Commission. However, since most of the required forms were not filed with the Commission, it is difficult to ascertain whether or not the wells were properly plugged.

33. The evidence shows that in the case of the B-2 Well, Halliburton records indicate that the casing was cemented to the surface. The report (Sundry Notices and Reports on Wells) filed with the USGS and signed by a J. Wayne Johnson indicates that casing was left in the hole, five sacks of cement placed in the bottom and three sacks placed in the top to cover the hole. Although this report was approved by the Deputy Supervisor, it is noted that the actual plugging operations were not witnessed.

34. The Sundry Notices and Reports on Wells filed with the USGS for Well No. 1-B indicates that surface casing was set to a depth of 40 feet below ground level and cemented to surface. Ten sacks of cement were pumped to the bottom of the hole, mud added and after settling for 3 days surface casing cut off at li inches below ground level and three sacks of cement pumped into the top. The notice filed also indicates that the plugging operations were not witnessed.

35. A letter dated November 21, 1958, to the Area Director, Bureau of Indian Affairs from the Acting District Engineer states that a lease inspection made November 20, 1958, indicated wells on the Sophie Harrison Lease, NW/4 NE/4 NW/4 and NW/4NE/4NW/4NE/4NW/4NW/4 and S/2NW/4NW/4NW/4 were plugged and surface remedial work completed.

36. Against this information, we have the testimony that a hole located where the Harrison B-2 Well should be is purging salt water. That Continental Oil Company dug a pit 25 feet deep around this location attempting to find the surface

APPENDIX A

casing and that none was located. There was also testimony indicating that casing was noted lying on the ground at the time the plugging of the B-2 was being accomplished.

37. The Commission finds that the Sophie Harrison B-2 Well and the Sophie Harrison B-1 Well were not plugged in accordance with the Rules and Regulations of the Corporation Commission.

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ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of Oklahoma that Curry & Curry plug the Sophie Harrison B-2 Well, located in the SW/4 NW/4 NW/4 and the Sophie Harrison B-1 Well Located in the SE/4 NW/4 NE/4 NW/4 of Section 10, Township 3 South, Range 5 West, Stephens County, Oklahoma within 90 days of the date of the Order and to file report of plugging within 10 days after completion of plugging.

DONE AND PERFORMED this 10 day of January, 1978.

CORPORATION COMMISSION OF OKLAHOMA

s/Rex Privett
REX PRIVETT, CHAIRMAN

s/Hamp Baker
HAMP BAKER, VICE-CHAIRMAN

s/Jan Eric Cartwright
JAN ERIC CARTWRIGHT, COMMISSIONER

ATTEST:

s/ Ed Overholser
ED OVERHOLSER, SECRETARY

APPENDIX A

APPENDIX B

IN THE SUPREME COURT OF THE

STATE OF OKLAHOMA

P.W. CURREY AND MRS. JAMES D. CURREY d/b/a CURREY & CURREY, Appellants,	)	
VS.	)	NO. 51906
CORPORATION COMMISSION OF OKLAHOMA; DAN R. DUNNETT, DIRECTOR OF CONSERVATION FOR CORPORATION COMMISSION OF OKLAHOMA Appellees	)	FILED SUPREME COURT STATE OF OKLAHOMA ROSS N. LILLARD, JR., CLERK January 31, 1978

PETTTION IN ERROR

Appellants state:

1. This Appeal is brought to review the decision of the Corporation Commission of the State of Oklahoma, said decision being issued on the 10th day of January, 1978 as Order No. 137283 in Cause P.D.No. 8236 by the Commission styled as follows:

COMPLAINT OF DAN R. DUNNETT, DIRECTOR OF CONSERVATION, FOR AN ORDER REQUIRING CURRY & CURRY TO PLUG WELLS LOCATED IN THE SW/4 NW/4 NW/4 OF SECTION 10 TOWNSHIP 3 SOUTH, RANGE 5 WEST, STEPHENS COUNTY, OKLAHOMA.

A true and correct copy of the "Report of the Commission" incorporating the Order Complained of is attached as "Exhibit A" and incorporated herein by reference.

2. The style and number assigned to proceedings below is as contained with Exhibit A.

3. The proceedings below were initiated upon the Complaint of Appellee Dan R. Dunnett (hereafter "DUNNETT") in his capacity as Director of Conservation for the Corporation Commission of Oklahoma (hereafter "Commission") wherein DUNNETT sought an Order from the Commission to compel Appellants, Respondents below, to plug certain oil and gas wells located in Stephens County, Oklahoma, one or more of which wells were said to be "purging". Upon hearing, the Acting Trial examiner for the Commission issued his "Report of the Trial Examiner," which inter alia recommended that Appellants be required to "properly plug" the alleged offensive wells, although the evidence indicated that the wells had once been plugged. Appellants took exception to the "Report of the Trial Examiner" and, upon hearing, the Commission,

in effect, affirmed the Trial Examiner's Report, finding that two of the wells "were not plugged in accordance with the Rules and Regulations of the Corporation Commission and ordering Appellants to "plug" the two wells within ninety (90) days of the date of the Order and to file appropriate plugging reports.

4. The decision and Order appealed from was rendered on the 10th day of January, 1979, with compliance by Appellants to be accomplished on or before ninety (90) days thereafter.

5. Appellants complain of the following error by the Commission in its decision and Order:

a. The Commission lacked jurisdiction to enter said Order as against Appellants for one or more or the following reasons:

1) The wells in question are located on restricted Indian land and, as such, drilling and plugging operations are under the exclusive jurisdiction of the United States government to the exclusion of the Commission;

2) Assuming that the Commission had, to some degree, a superintending jurisdiction

in the plugging of wells on restricted Indian lands, such jurisdiction did not extend to exceed or contravene the plugging requirements imposed by federal regulatory agencies;

3) Assuming that the Commission had, to some degree, a superintending jurisdiction in the plugging of wells, it had no authority under applicable plugging statutes to compel Appellant to re-enter the wells and replug or repair plugs on the wells.

b. The findings and conclusions made by the Commission are not supported by evidence or law, to-wit:

1) All creditable evidence support a finding that each of the wells was plugged in a manner which complied with existing federal and state regulations and the custom and practice of the industry;

2) The applicable "plugging" statute, 52 O.S. 1951 Sec. 53, did not authorize the Commission to compel Appellant to re-enter, replug or repair plugs when, once having done so, Appellants had abandoned the wells;

3) Such statutory authority which may have been enacted subsequent to the plugging of the wells and which purports to grant authority to the Commission to compel Appellants to re-enter and replug the wells constitute, as a matter of law, ex post facto legislation and may not be applied to Appellants;

4) The compulsive order of the Commission as against Appellants was barred by the Statute of Limitatons; and

5) No evidence exists which will support a conclusion that the manner or method of plugging by Appellants did not comply with the Rules and Regulations of the Corporation Commission.

WHEREFORE, premises considered, Appellants pray this Honorable Court to grant the following relief:

1. To set aside and vacate the Order of the Commission wherein the Commission compels Appellants to

> "...plug the Sophie Harrison B-2 Well, located in the SW/4 NW/4 NW/4 and the Sophie Harrison B-1 Well located in the SE/4 NW/4 NE/4 NW/4 of Section 10, Township 3 South, Range 5 West, Stephens County, Oklahoma within 90 days of the

date of the Order and to file report of pluggin within 10 days after completion of plugging;"

2. To dismiss Appellants from this and any other proceedings before the Commission or other tribunal to abate or correct such conditions as may now or may hereafter exist at the sites of the wells described in the Report of the Commission;

3. To order costs of this appeal to be assessed against and paid by the Commission, and

4. Such other and further relief as to which Appellants are entitled.

P. W. CURREY AND MRS. JAMES D. CURREY
d/b/a CURREY & CURREY a/k/a
CURREY, SHIELDS & CURREY, Appellants

s/Manville T. Buford
MANVILLE T. BUFORD
Buck, Crabtree, Ransdell & Buford
1700 Park Harvey Center
Oklahoma City, Oklahoma 73102

Attorneys for Appellants

APPENDIX B

CERTIFICATE OF MAILING

On this 31 day of January, 1978, a true and correct copy of the foregoing was filed with the Corporation Commission of Oklahoma and mailed, postage prepaid, to the following:

Honorable Larry Derryberry
Attorney General of the State Oklahoma
Capitol Building
Oklahoma City, Oklahoma 73105

Nathan Sherman
Assistant Conservation Attorney
Oklahoma Corporation Commission
Jim Thorpe Building
Oklahoma City, Oklahoma 73105

John R. Robertson, Jr.
Attorney for Continental Oil Company
1000 Fidelity Plaza
Oklahoma City, Oklahoma 73102

Charley W. Nease
District Engineer
U. S. Geological Survey
50 Penn Place
Oklahoma City, Oklahoma 73112

Don B. Edinger
Acting Trial Examiner
Oklahoma Corporation Commission
Jim Thorpe Building
Oklahoma City, Oklahoma 73105

s/Manville T. Buford
MANVILLE T. BUFORD

APPENDIX B

APPENDIX C

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

P. W. Currey and Mrs. James D. Currey d/b/a Currey & Currey a/k/a Currey, Shields & Currey,	)	
Appellants,	)	
vs.	)	No. 51,906
Corporation Commission of Oklahoma; Dan R. Dunnett, Director of Conservation for Corporation Commission of Oklahoma,	)	FILED June 12, 1979 ROSS N. LILLARD, JR. Clerk, SUPREME COURT STATE OF OKLAHOMA
Appellees.	)	

Appeal from Order of Corporation Commission directing Appellants to replug abandoned oil and gas wells which are purging salt water onto the surface of the land.

ORDER OF THE CORPORATION COMMISSION AFFIRMED

Manville T. Buford,
Buck, Crabtree, Ransdell & Buford
Oklahoma City, Oklahoma — For Appellants;

Harvey Cody,
Conservation Attorney,
Nathan S. Sherman,
Assistant Conservation
Attorney,
Oklahoma Corporation
Commission, For Appellees.

WILLIAMS, J.

Appeal is taken by P. W. Currey and Mrs. James D. Currey d/b/a Currey & Currey a/k/a Currey, Shields & Currey (Appellant/Currey) from Order No. 137273 of the Corporation Commission (Commission) directing Currey to replug two wells located in Stephens County.

Appellant obtained oil and gas exploration lease rights to restricted Choctaw lands located in Stephens County, Oklahoma. The lease was obtained throught the Bureau of Indian Affairs (BIA), which then turned direct supervision to the United States Geological Survey (USGS).

Evidence adduced before the Trial Examiner for the Commission disclosed further that Currey drilled three wells, "Sophie Harrison No. 1," "Sophie Harrison No. B-1" and Sophie Harrison No. B-2" (wells). All three wells were abandoned in the mid-1950's. The wells were thereafter plugged, and

appropriate reports made to USGS. Parties disagree as to the degree of compliance with Commission filing requirements, but both agree that Currey did not fully comply with all Commission filing requirements.

In 1976 Continental Oil Company, an adjacent and contiguous lessee, discovered salt water purging from one of Currey's wells. Continental informed the Commission, which thereafter inspected the site, found one well to be purging and issued a complaint. The complaint was later amended to encompass another well found to be purging.

Extensive testimony was taken by the trial examiner regarding compliance with USGS plugging requirements and conformity to Commission filing requirements. The degree of compliance is not determinative.

It is not disputed that the wells were drilled and operated by Currey over twenty years ago, and that now two of these wells are spewing forth salt water in excess of forty barrels a day onto the land.

APPENDIX C

Appellant contends generally that the Corporation Commission has no jurisdiction to order reworking or replugging of wells because the wells are located on restricted Indian lands under exclusive jurisdiction of the Federal Government.

Appellant Currey further argues that even if the Federal Government lacks exclusive jurisdiction, still the Commission is without statutory authority to compel replugging. We shall deal with the second argument first.

Appellant relies heavily on Minshall v. Corporation Commission, Okl., 485 P.2d 1058 (1971), which has been further clarified by Ashland Oil, Inc. v. Corporation Commission, ___P.2d___. Ashland supra clarifies Minshall and addresses itself more specifically to such facts as are involved in the case at bar as follows:

> Ashland urges on appeal that Minshall v. Corporation Commission, Okl. 485 P.2d 1058 (1971) controls. In Minshall, the Corporation Commission found that a well drilled, plugged, and abandoned by Minshall was leaking gas through and onto the ground. Apparently

relying upon 52 O.S. Supp. 1965, §3101,[1] the Commission ordered Minshall to replug the well.

On appeal, the Minshall court stated in its syllabus: 'Neither 17 O.S. 1961, §53, nor any of the provision of Senate Bill No. 396 of the Thirtieth (1963) Oklahoma Legislature (Chapter 191 O.S.L. 1965; 52 O.S. Supps. 1965-1969, §§309 through 317) imposes upon any one an obligation to replug, or repair, an abandoned well that has been plugged but is presently leaking salt water, oil, gas, or other deleterious substances.'

...At page 1061 of Minshall, we read: *** If the well has been plugged, the question of whether or not it was properly plugged in accordance with the then-effective rules and regulations is not involved.'

Additionally, as the Commission correctly points out, the Court in Minshall clearly limited its consideration to the

1. Amended by Laws, c.217, § 2.

application of 52 O.S. Supps. 1965-1969, §§309-315 on the question of an operator's responsibility and did not concern itself with amendments to that Act enacted subsequent to the order of the Commission or with any other existing statutes.

For purposes of the instant action it is important to note that the Court did not consider the impact of the 1970 Amendment to §310 (Laws 1970, ch. 217, §2) which provides: '*** (b) that the operator or any other person responsible for plugging, replugging or repairing the well in such manner as is necessary to prevent further pollution cannot be found, or is financially unable to pay the cost of performing such work.***'

Without question, this provision supplies the explicit legislative imposition of the operator's liability for 'plugging, replugging or repairing' which was found missing at the time of Minshall was decided. Consideration of this provision together with numerous other statutory declarations[2]

2. 17 O.S. 1971, §§51, 53; 52 O.S. 1971, §§ 86.2, 86.3, 271-279, 309-320; 52 O.S. Supp. 1975, §102.

leaves absolutely no room for doubt that the Corporation Commission has the statutory power to order an operator to replug wells which were improperly plugged.*** (Emphasis added).

The record reveals the Commission's finding that the wells were not properly plugged was supported by substanial evidence. This Court is not required to weigh the evidence on appeal, but to review the evidence and affirm the order where the finding and conclusions of the Commission are sustained by law and substanial evidence. O.S. 1971 Const. Art. 9 §20; Superior Oil Co. v. Oklahoma Corporation Commission, Okl., 242 P.2d 454 (1952). Assuming Oklahoma has jurisdiction over wells drilled on restricted Indian land, the Commission has the authority to order reworking or replugging of these wells, and we so hold.

Next requiring attention is appellant's second major argument that because the wells were drilled on restricted Indian lands Oklahoma is without jurisdiction.

APPENDIX C

Currey cites as authority O.S. 1971 Const. Art. 1 sec. 3 as follows:

> The people inhabiting the State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States.

and Public Law No. 83-280, 67 Stat 588 (1953), which in pertinent part states:

> Sec. 6. Notwithstanding the provisions of any Enabling Act for the admission of State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or exisiting statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in

accordance with the provisions of the Act: ***. (Emphasis added.

Appellant simply argues that the Constitutional impediment under Sec. 3 supra has not been properly removed by any Constitutional amendment. Appellant proceeded on the assumption that if a right is held by the Federal Government and later abrogated, then there must be an affirmative corresponding state enactment to fill the void. This assumption is erroneous.

A federal district court held[3] in construing P. L. 280 supra that: "Congress, under the constitutional power to regulate commerce with the Indians, has preempted the field of regulation of Indian land to the extent that such is necessary to protect the Indians' rights therein and to preserve title thereto until the day when the Indian has developed culturally to a point where he can deal and manage his own affairs."

The Court goes on further to say that, "Congress in recent years has recognized that

3. the Agua Caliente Band of Mission Indians' Tribal Council et al., v. The City of Palm Springs, etc., et al., (D.C., Cal.), 347 F. Supp. 42, (1972).

Indians in some states, . . . have reached a state of acculturation where some federal controls might properly be relaxed.*** Public Law 280, like other similar laws in recent years, is a withdrawal by Congress from its preemption in this field. It has done so in this case by express grant to the state of authority, among other things, to exercise its police power in such a way as to impose upon Indian lands the same regulations imposed upon all lands within the boundaries of the state. To the extent that any further withdrawal by the Federal Government occurs, the sovereignty of the state becomes enlarged to that extent." (Emphasis added).

In 1947, prior to the drilling and plugging of the wells in question, Public Law 80-336, found in 61 Stat. 731, Act of August 4, 1947 Ch. 459, was passed by the Congress of the United States. Section 11 of said Act specifically withdraws Congress from preemption in the field of oil and gas conservation and thereby enlarged the sovereignty of Oklahoma to that extent. It reads:

"11. All restricted lands of the Five Civilized Tribes are hereby made subject to all Oil

and Gas Conservation laws of the State of Oklahoma; ..."(Emphasis added).

No affirmative statutory enactment was necessary for Oklahoma to assume jurisdiction abrogated by the federal government.

The United States Supreme Court in Organized Village of Kake v. Egan, 369 U.S. 60 (1962), in an opinion by Mr. Justice Frankfurter, construed an Alaskan conservation law, in light of a Constitutional provision similar to Oklahoma's Article 1, Sec.3. Indian communities brought an action against the Governor of Alaska to enjoin enforcement of the Alaska Anti-Fish Trap Conservation Law.

The principal dispute concerned," ...the meaning of sec. 4 of the Statehood Act, in which the State disclaimed all right and title to and the United States retained absolute jurisdiction and control over, inter alia, 'any lands or other property ..., the right or title to which may be held by any Indians ...' or is held by the United States in trust for said natives." Organized Village of Kate, supra, at p. 565.

APPENDIX C

The Court states further at page 567 that:

> Although the reference to fishing rights is unique, the retention of 'absolute' federal jurisdiction over Indian lands adopts the formula of nine prior statehood acts. Indian lands in Arizona remained 'under the absolute jurisdiction and control' of the United States, 36 Stat. 557; Yet in Williams v. Lee, 358 U.S. 217, 220, 223, 79 S.Ct. 269, 270, 272, 3 L.Ed.2d 251, we declared that the test of whether a state law could be applied on Indian reservations there was whether the application of that law would interfere with reservation self government. The identical language appears in Montana's Admission Act, 25 Stat. 676, 677. Yet in Draper v. United States, 164 U.S. 240, 17 S.Ct. 107, 41 L.Ed. 419, the Court held that a non-Indian who was accused of murdering another non-Indian on a Montana Reservation could be prosecuted only in the state courts. ***
>
> Draper and Williams indicate that 'absolute' federal jurisdiction is not invaiably exclusive jurisdiction. (Organized Village of Kake, supra.) (Emphasis added).

Oklahoma's disclaimer of right and title to Indian lands is a disclaimer of proprietary rather than governmental interests. "The State may well waive its claim to any right or title to the lands and still have all of its political or police power with respect to the actions of the people on those

lands, as long as that does not affect the title to the land." Kake, supra.

We hold that the power of the Corporation Commission to regulate oil and gas conservation measures under the laws of the state on restricted Indian lands and order appellant to replug purging wells, is not precluded by the federal jurisdiction. Our Constitutional mandate contained in O.S. 1971 Art. 1 Sec. 3 stating that Indian lands "shall be and remain subject to the jurisdiction, disposal, and control of the United States", envisions undiminished and not exclusive jurisdiction. We so hold.

CONCUR: Hodges, Barnes, Simms, Doolin and Hargrave, JJ.

CONCUR BY REASON OF STARE DECISIS:

Lavender, C.J. and Opala, J.

APPENDIX C

APPENDIX D

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

P. W. CURREY and MRS. JAMES D. CURREY d/b/a CURREY & CURREY a/k/a CURREY, SHIELDS & CURREY	)	
Appellants,	)	
v.	)	NO.51,906
	)	FILED
CORPORATION COMMISSION OF OKLAHOMA, et.al.,	)	JUNE 25, 1979
	)	ROSS N. LILLARD, JR.
	)	CLERK
	)	SUPREME COURT
Appellees.	)	STATE OF OKLAHOMA

PETTTION FOR REHEARING

Appellants, by and through counsel and pursuant to Rule 28, Rules of the Supreme Court of Oklahoma, respectfully petition the Court for rehearing in the captioned cause. In support thereof, Appellants state:

1. The Opinion issued and filed June 12, 1979, involved matters of first impression in this jurisdiction and constitute, apart from the novel

nature thereof, matters on considerable concern to the parties and the implementation and enforcement of oil and gas conservation laws of the State.

2. Appellant believes and, in good faith and with all due respect to the Court, states that the Court erred in its interpretation of the provisions of statute in holding that the Corporation Commission had present authority and jurisdiction to compel an oil operator, operating under federal regulatory restrictions to reenter and replug abandoned wells once plugged.

3. Appellant believes the Court erred in its determination that federal jurisdiction with respect to restricted Indian lands has been withdrawn in a manner so as to enlarge state regulatory jurisdiction in and on such lands.

4. Appellant believes the Court erred in its determination that the federal government has extended to the State of Oklahoma, without affirmative acts of the State, exclusive or concurrent jurisdiction over Indian lands so as to authorize the Corporation Commission to exercise

regulatory control over oil and gas operations thereon.

5. Appellants believe that the Court either disregarded or misinterpreted what Appellant regards as a fundamental principle of law supporting Appellants' position, to wit: that the existence of pervasive federal regulation in the area of oil and gas operations on Indian lands, including the reworking and replugging thereon, has preempted the imposition of state regulatory power notwithstanding other jurisdictional issues. Such federal regulation, even if operated in conjuction with state jurisdiction, previals over state regulations to the extent that a conflict exists. Appellants respectfully believe that such an issue is of such magnitude with respect to Appellants rights and obligations that it would work an injustice not to have the issue treated by this Court.

WHEREFORE, Appellants pray the Court, upon consideration, withdraw its Opinion issued and filed June 12, 1979, and issue its Order vacating the Order of the Corporation Commission, for costs

and such other relief as to which Appellants may be entitled.

Respectfully submitted,

s/Manville T. Buford
Manville T. Buford
P. O. Box 60855
Oklahoma City, Oklahoma
73106
(405) 521-3921

CERTIFICATE OF MAILING

On this 25th day of June, 1979, a true and correct copy of the foregoing was mailed, postage prepaid, to the following:

Hon. Jan Eric Cartwright
Attorney General
Capitol Building
Oklahoma City, Oklahoma
73105

Nathan Sherman
Assistant
Conservation
Attorney
Jim Thorpe Building
Oklahoma City,
Oklahoma 73105

John R. Robertson,
Attorney
1000 Fidelity Plaza
Oklahoma City, Oklahoma
73102

s/Manville T. Buford

APPENDIX D

APPENDIX E

IN SUPREME COURT OF THE STATE OF OKLAHOMA

P.W.Currey and Mrs. James D. Currey d/b/a Currey & Currey a/k/a Currey, Shields & Currey,	)	
Appellants,	)	
vs.	)	No. 51,906
	)	FILED
Corporation Commission of Oklahoma; Dan R. Dunnett, Director of Conservation for Corporation Commission of Oklahoma,	)	September 22,1980
	)	ROSS N. LILLARD, JR.
	)	CLERK
	)	SUPREME COURT
	)	STATE OF OKLAHOMA
Appellees.	)	

CORRECTION ORDER

It is hereby ordered that the typewritten opinion of this court filed and promulgated in the above styled case on the 12th day of June 1979, be ordered to be corrected and it is corrected as hereinafter set forth, that is to say that in the ninth line of page 6 of such typewritten opinion next following the end of the partial quotation

which concludes with the words and grammatical symbol, to-wit: State of Oklahoma; and next preceding the grammatical symbols and words, to-wit: ..."(Emphasis added)., there be inserted (in lieu of the ellipsis symbol) the following words and grammatical symbols, to-wit: Provided, That no order of the Corporation Commission affecting restricted Indian land shall be valid as to such land until submitted to and approved by the Secretary of the Interior or his duly authorized representative.

It is further ordered that the vote of the Justices shown at the conclusion of such typewritten opinion (in addition to the name of the author of the opinion occurring at the commencement of the body thereof) be corrected as follows:

BARNES, SIMMS, DOOLIN, and HARGRAVE, JJ. concur.

LAVENDER, C.J., and OPALA, J. concur by reason of stare decisis.

HODGES, J., dissents.

It is further ordered that such opinion with such language added and with said ellipsis symbol

APPENDIX E

deleted (and as heretofore ordered corrected and so corrected, including correction of the vote of the Justices), shall otherwise remain in full force and effect.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE this 22nd day of September, 1980.

s/Robert E. Lavender

Chief Justice

APPENDIX E

APPENDIX F

FILED
SEPTEMBER 22, 1980
ROSS N. LILLARD, JR.
CLERK
SUPREME COURT
STATE OF OKLAHOMA

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Monday, September 22, 1980

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

51,906 P.W. Currey And Mrs. James D. Currey d/b/a Currey And Currey v. Corporation Commission of Oklahoma; Dan R. Dunnett, Director Of Conservation For Corporation Commission of Oklahoma.

Rehearing denied.

(NOTE: Other orders on cases not relevant have been deleted)

s/Robert E. Lavender

CHIEF JUSTICE

APPENDIX G

STATE OF OKLAHOMA)
) SS.
SUPREME COURT)

MANDATE

P.W.CURREY AND MRS. JAMES D.CURREY d/b/a CURREY &CURREY a/k/a CURREY, SHIELDS & CURREY,	)	
vs.	)	No. 51,906
CORPORATION COMMISSION OF OKLA.; DAN R. DUNNETT, DIRECTOR OF CONSERVATION FOR CORPORATION COMMISSION OF OKLA.,	)	Corporation Commission of Oklahoma PD-82-36

THE SUPREME COURT OF OKLAHOMA:

To the Honorable Judge of the Corporation Commission of Oklahoma in said State of Oklahoma.

Whereas, the Supreme Court of the State of Oklahoma, did on the 12th day of June, 1980 render an opinion in the above entitled cause, appealed from the Corp. Comm. Court of Oklahoma

ORDER OF THE CORPORATION COMMISSION AFFIRMED

See Attached Correction Order of September 22, 1980.

Now, Therefore, you are hereby commanded to cause such Affirmance to show of record in your court and to issue such process and take such other and further action as may be in accord with right and justice and said opinion.

Witness, the Honorable Robert F. Lavender, Chief Justice of the Supreme Court of the State of Oklahoma, at the City of Oklahoma City, this 25th day of September, 1980.

ROSS N. LILLARD JR., Clerk

By s/Pamela J. Barney Deputy.

APPENDIX G

APPENDIX "H"

APPLICABLE. PROVISIONS OF THE UNITED STATES CONSTITUTION

Article I, Section 8, Clause 3:

The Congress Shall Have Power

* * * *

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

* * * *

Article VI, Clause 2:

* * * *

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing

in the Constitution or Laws of any State to the Contrary notwithstanding.

* * * *

APPENDIX H

APPENDIX I

APPLICABLE PROVISIONS OF FEDERAL STATUTES

OKLAHOMA ENABLING ACT.
Act of June 16, 1906, c. 3335, §1,
34 Stat. 267

---

* * * *

That the inhabitants of all that part of the area of the United States now constituting the Territory of Oklahoma and the Indian Territory, as at present described, may adopt a constitution and become the State of Oklahoma, as hereinafter provided: Provided, that nothing contained in the said constitution shall be construed to limit or impair the rights of persons or property pertaining to the Indians of said Territories (so long as such rights shall remain unextinguished) or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such

Indians, their lands, property or other rights by treaties agreement, law or otherwise, which it would have been competent to make if this Act had never been passed. (Pertinent portions underscored)

* * * *

Pub. L. 83-280, c.505, Act of August 15, 1953, §§6, 7, 67 Stat. 590:

---

* * * *

Sec. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: Provided, that the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be. (Emphasis original).

Sec. 7. The consent of the United States is hereby given to any other State not have jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof.

* * * *

Pub. L. 90-284, Act of April 11, 1968, Title IV, §404, 82 Stat. 77, 79, 25 U. S. C. §1324.

---

* * * *

Sec. 404. Notwithstanding the provisions of any enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil or criminal jurisdiciton in accordance with the provisions of this title. The provisions of this titile shall not become effective

with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes, as the case may be.

* * * *

Pub. L. 80-336, §11, Act of August 14, 1947, c. 459, 61 Stat. 731

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* * * *

All restricted lands of the Five Civilized Tribes are hereby made subject to all oil and gas conservation laws of Oklahoma: Provided, that no order of the Corporation Commission affecting restricted Indian land shall be valid as to such land until submitted to and approved by the Secretary of the Interior or his duly authorized representative. (Emphasis original)

* * * *

APPENDIX I

APPENDIX J

APPLICABLE FEDERAL REGULATIONS

A. 25 CFR Part 1, §§ 1.2-1.4-Applicability of Rules.

§1.2 Applicability of regulations and reserved authority of the Secretary of the Interior.

The regulations in Chapter I of Title 25 of the Code of Federal Regulations are of general application. Notwithstanding any limitations contained in the regulations of this Chapter, the Secretary retains the power to waive or make exceptions to his regulations as found in Chapter I of Title 25 of the code of Federal Regulations in all cases where permitted by law and the Secretary finds that such waiver or exception is in the best interest of the Indians.

§1.3 Scope.

Chapters I and II of this title contain the bulk of the regulations of the Department of the

Interior of general application relating to Indian affairs. Subtitle B, Chapter I, Title 43 of the Code of Federal Regulations contains rules relating to the relationship of Indians to public lands and townsites. Subtitle A of Title 43 of the Code of Federal Regulations has application to certain aspects of Indian affairs and among other things, contains procedural rules for appellate and other administrative review and for practice before the Department of the Interior, of which the Bureau of Indian Affairs is a part. Indian health matters are covered in 42 CFR Part 36. Title 30 of the Code of Federal Regulations contains regulations on oil and gas and other mining operations, which, under certain circumstances, may be applicable to Indian resources.

(25 FR 3124, Apr.12, 1960, as amended at 40 FR 20625, May 12, 1975)

§1.4 State and local regulation of the use of Indian property.

(a) Except as provided in paragraph (b) of this section, none of the laws, ordinances, codes, resolutions, rules or other regulations of any State

of political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

(b) The Secretary of the Interior or his authorized representative may in specific cases or in specific geographic areas adopt or make applicable to Indian lands all or any part of such laws, ordinances, codes, resolutions, rules or other regulations referred to in paragraph (a) of this section as he shall determine to be in the best interest of the Indian owner or owners in achieving the highest and best use of such property. In determining whether, or to what extent, such laws, ordinances, codes, resolutions, rules or other regulations shall be adopted or made applicable, the Secretary or his authorized representative may

consult with the Indian owner or owners and may consider the use of, and restrictions or limitations on the use of, other property in the vicinity, and such other factors as he shall deem appropriate.

(30 FR 7520, June 9, 1965) (Pertinent portions underscored)

B. 25 CFR Part 183, §183.1 (1954 Ed.) — "Leasing of Restricted Sands of Members of Five Civilized Tribes, Oklahoma, for Mining."

---

§182.1 Definitions. The term "Area Director" in this part refers to the officer in charge of the Five Civilized Tribes Indian Agency. Whenever the term "superintendent" is used in this part, the term "Area Director" shall be substituted therefor.

The term "supervisor" in this part refers to a representative of the Secretary of the Interior under direction of the Director of the United States Geological Survey Geological Survey, authorized and empowered to supervise and direct operations under oil and gas or other mining lease, to furnish scientific and technical information and advice, to ascertain and record the amount and value of production, and to determine and record rentals and royalties due and paid.

(16 F.R. 9192, Sept. 11, 1951)

C. 30 CFR, Part 221 §§221.3-221.5 inclusive (1949 Ed.) — "Oil and Gas Operating Regulations.".

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§221.3 Jurisdiction. Drilling and producing operations, handling and gaging of oil and the measurement of gas and other products, determination of royalty liability, receipt and delivery to those entitiled thereto of rayalty accruing to the lessor and paid in amount and manner of payment of damages assessed under authority of the regulations in this part for defaults of non-compliance with duties by the lessee and, in general, all operations subject to the regulations in this part are under the jurisdiction of the supervisor for any district as delineated by the Director. As to producing leases of Indian lands, the officer in charge, and as to lands within naval petroleum reserves, the supervisor shall determine rental liability, record rentals, royalties, and other payments, and maintain lease accounts. Upon request, the supervisor or the Director will advise any person concerning the regulations in this part, and will furnish technical information and advice

relative to oil and gas development and operation on lands subject hereto.

§221.4 General functions. The supervisor is hereby authorized to require compliance with lease terms, with the regulations in this part, and all other applicable regulations, and with applicable law to the end that all operations shall conform to the best practice and shall be conducted in such manner as to protect the deposits of the leased lands and result in the maximum ultimate recovery of oil, gas, or other products with minimum waste. Inasmuch as conditions in one area may vary widely from conditions in another area, the regulations in this part are general, and detailed procedure hereunder in any particular area is subject to the judgement and discretion of the supervisor, and to any areal plan of development that may be adopted pursuant to law. The supervisor may require satisfactory evidence that a lease is in good standing, that the lessee or operator is authorized to conduct operations, and that an acceptable bond has been filed before permitting operations on the leased land.

§221.5 Supervision of operations. The supervisor shall inspect and supervise operations under the regulations in this part; prevent waste, damage to formations or deposits containing oil, gas or water or to coal measures or other mineral deposits, and injury to life or property; and shall issue instructions necessary, in his judgment, to accomplish these purposes.

APPENDIX K

APPLICABLE PROVISIONS OF OKLAHOMA CONSTITUTION

Okla. Constitution, Art. 1, §3

The people inhabiting the State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States. Land belonging to citizens of the United States residing without the limits of the State shall never be taxed at a higher rate than the land belonging to residents thereof. No taxes shall be imposed by the State on lands or property belonging to or which may hereafter be purchased by the United States or reserved for its use. (Applicable provisions underscored).

APPENDIX "L"

APPLICABLE. PROVISIONS OF

Title 52, Oklahoma Statutes 1971 §243:

The Corporation Commission shall have authority to make regulations for the prevention of waste of natural gas, and for the protection of all natural gas, fresh water, and oil bearing strata encountered in any well drilled for oil or natural gas, and to make such other rules and regulations as may be necessary to enforce this act.

Title 52, Oklahoma Statutes 1971 §273

* * * the Corporation Commission shall have authority to make rules and regulations for the prevention of such waste, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil.

Title 17, Oklahoma Statutes 1971, §§51-53:

(§51) The Corporation Commission is hereby empowered and authorized to create and establish an oil and gas department under the jurisdiction and supervision of the Corporation Commission, and is

hereby authorized to appoint with the approval and consent of the Governor, a chief oil and gas conservation agent who shall have charge of the oil and gas department herein authorized."

(§52) All authority and duties now conferred upon the Corporation Commission or other departments of the State government in reference to the conservation of oil and gas and the drilling and operating oil and gas wells and the construction and regulation of oil and gas pipe lines, are hereby conferred exclusively upon the Corporation Commission.

(§53) The Corporation Commission is hereby authorized to prescribe rules and regulations for the plugging of all abandoned oil and gas wells. The same shall be plugged under the direction and supervision of the conservation agents of the Corporation Commission as may be prescribed by the Corporation Commission. All orders and regulations in reference to plugging wells shall be made after general hearing as now presecribed by law for the promulgation of orders by the Corporation Commission.

Title 75, Oklahoma Statutes 1971 § 184 relating to the decennial codification of statutes.

The Oklahoma Statutes 1971, compiled, codified and annotated and indexed under the provisions of House Bill No. 1085, Title 75, Chapter 6A, Oklahoma Session Laws 1971, Page 266, and compiled, codified and annotated under the supervision of the Justices of the Supreme Court of the State of Oklahoma and approved by them on November 9, 1971, and promulgated and published by John Rogers, Secretary of State, under proclamation dated January 5, 1972; said Oklahoma Statutes being further identified as four volumes, Volume 1 containing pages 1 to 1616, inclusive, Volume 2 containing pages 1617 to 3324, inclusive, Volume 3 containing pages 3325 to 5157, inclusive, and Volume 4 containing pages 5159 to 6604, inclusive, are hereby adopted as the Code and Revised Statutes of the State of Oklahoma to be known as Oklahoma Statutes 1971, and that all general laws of the State of Oklahoma not therein contained are hereby repealed; Provided, however, that this act shall not be construed to repeal or in any way affect or modify any special or local laws or any law making

an appropriation or any law relating to any special election or validating act or any law affecting any bond issue or by which any bond issue may have been authorized, not to affect any pending preceedings or any existing rights or remedies, nor the running of the Statutes of Limitations in force at the time of the approval of this act; but all such local and special laws, laws making appropriations, laws relating to special elections, validating acts, and laws relating to or authorizing bond issues, pending proceedings, and existing rights and remedies, and Statutes of Limitations running and in force at the time of the approval of this act shall continue and exist in all respects as if this act had not been passed. Provided, further, that this act shall not be construed to alter, change, impair, disparage, vest or divest, or in any way affect any right or interest of the United States, the State of Oklahoma, any of the Five Civilized Tribes, or other Tribes or Nations of Indians within the State of Oklahoma.

(Laws 1972, c. 19, § 1, eff. Feb. 7, 1972.)
(Pertinent portions underscored).

APPENDIX L

FILED
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No. 80-1010

In the Supreme Court of the United States

OCTOBER TERM, 1980

P. W. CURREY and MRS. JAMES D. CURREY
d/b/a CURREY & CURREY
a/k/a CURREY, SHIELDS & CURREY,
Petitioners,

VERSUS

CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Oklahoma

BRIEF IN OPPOSITION OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

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March, 1981

QUESTION PRESENTED

May the Oklahoma Corporation Commission, acting under the police power of the state, require a non-Indian operator of purging wells located on restricted Choctaw land to plug said wells?

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No. 80-1010

In the Supreme Court of the United States

OCTOBER TERM, 1980

P. W. CURREY and MRS. JAMES D. CURREY
d/b/a CURREY & CURREY
a/k/a CURREY, SHIELDS & CURREY,
Petitioners,

VERSUS

CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Oklahoma

BRIEF IN OPPOSITION OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

The Respondents, Corporation Commission of the State of Oklahoma, respectfully prays this Court to not issue a writ of certiorari to review the judgment and opinion of the Oklahoma Supreme Court entered in this proceeding on June 12, 1979; rehearing denied and correction order entered September 22, 1980.

OPINION BELOW

The opinion of the Oklahoma Supreme Court, reported as *Currey* v. *Corporation Commission of Oklahoma,* 617 P.2d 177 (Okl. 1980), appears in Appendix "A" herein, as corrected in Appendix "B" herein.

STATUTORY PROVISIONS INVOLVED

Oklahoma Statutes, Title 17, sec. 53, Rules and Regulations — Plugging Wells; Title 52, sec. 309, Findings and Declarations; Title 52, sec. 310, Leaking Wells — Entry Upon Land to Plug, Replug or Repair — Emergencies; Title 52, sec. 311, Liability for Damages; Title 52, sec. 312, Responsibility for Future Remedial Work; Title 52, sec. 313, No Admission of Liability or Discharge of Action; Title 52, sec. 314, Right of Action for Costs Involved — Lien; Title 52, sec. 315, Supplemental Remedy; Title 52, sec. 316, Proceedings; Title 52, sec. 317, "Person" Defined; Title 52, sec. 318, Remedial Work — Contracts Upon Competitive Bids; Title 52, sec. 318.1, Agreement as to Compliance with Drilling and Plugging Regulations — Recovery of Costs.

See Appendix "C".

STATEMENT OF THE CASE

In the early 1950's, petitioners, a Texas partnership, obtained a lease through the Bureau of Indian Affairs (Bureau) to certain restricted Choctaw lands located in Stephens County, Oklahoma. Upon execution of the lease and the posting of required surety, the Bureau turned supervision over to the United States Geological Survey (USGS). Petitioners drilled three wells: the Sophie Harrison No. 1 located in the NW/4 NW/4 NW/4, the Sophie Harrison B-1 located in the SE/4 NW/4 NE/4 NW/4, and the Sophie Harrison B-2 located in the SW/4 NW/4 NW/4, all in Section 10, Township 3 North, Range 5 West, Stephens County, Oklahoma.

Completion reports were filed with the USGS for the three wells: Sophie Harrison No. 1 on March 29, 1954; Sophie Harrison B-1 on August 4, 1954; and Sophie Harrison B-2 on August 17, 1954.

In the mid-1950's, each well was the subject of a"Notice of Intent to Abandon", filed with the USGS, which notice contained a description of the method by which Petitioners intended to plug the wells. Such methods were utilized in the plugging, reported to and approved by the USGS. An incomplete plugging report for the Sophie Harrison B-1 was filed with the Oklahoma Corporation Commission on July 20, 1954, but no intent to drill, completion report or intent to plug were ever filed with the Commission nor was the plugging under the supervision of Commission personnel. The USGS then recommended to the Bureau that Petitioners bond be released and it was so released shortly thereafter.

On July 29, 1974, a plugging record for the Sophie Harrison B-1 was filed with the Oklahoma Corporation Commission. Later, in 1974, one of the wells experienced a surface break-out. Attempts by third parties (not parties here or below) to replug the well were unsuccessful and on March 12, 1976, the district manager, a representative of the Oklahoma Corporation Commission, made his first inspection finding the Sophie Harrison B-2 to be purging salt water at the rate of 45 barrels per day. A complaint was filed with the Commission. The Sophie Harrison B-1 was made the subject of a complaint later in 1977 after it was discovered to be also purging salt water on April 13, 1977.

The Director of Conservation filed an application for an order requiring Currey & Currey, as owner and operator, to plug an abandoned and purging oil or gas well, the Sophie Harrison B-2, located in the SW/4 NW/4 NW/4 of Section 10, Township 3 South, Range 5 West, Stephens County, Oklahoma. The application further stated that the well had not produced oil or gas in excess of six months and that the operator had refused, neglected and failed to plug the well in accordance with the laws, rules and regulations of the Corporation Commission and the State of Oklahoma.

Prior to the hearing, by response to the application, two other wells, the Sophie Harrison No. 1 and the Sophie Harrison B-1, were included at the request of the petitioners herein. The cause came on for hearing April 26, 1977, pursuant to notice given as required by law and the rules of the Commission. The trial examiner filed his report recommending an order be issued requiring Currey & Currey to plug the Sophie Harrison B-1 and the Sophie Harrison B-2. Petitioners herein filed exceptions to the report of the trial examiner and argued the exceptions before the Commission on September 12, 1977. The Commission took the cause under advisement. On January 10, 1978, the Commission adopted the trial examiner's report and issued Order No. 137283. Currey & Currey, petitioners herein, appealed from the Order to the Oklahoma Supreme Court by Petition in Error asserting, inter alia, the lack of Commission jurisdiction over restricted Indian land. The Oklahoma Supreme Court affirmed the Commission Order, from which Petitioners' sought this relief.

ARGUMENT

I.

THE PETITION FOR WRIT OF CERTIORARI SHOULD NOT BE GRANTED HEREIN AS THERE IS NOT A SUBSTANTIAL FEDERAL QUESTION AND THERE IS AN ADEQUATE INDEPENDENT NON-FEDERAL GROUND AS A BASIS FOR SUPPORTING THE JUDGMENT BELOW.

Petitioner invokes this Court's jurisdiction under the provisions of 28 U.S.C. sec. 1257(3) and Rule 19 (presently Rule 17) of the Supreme Court Rules stating that Oklahoma's oil and gas statutes are repugnant to the constitution, laws and regulations of the United States in that such laws vest the Oklahoma Corporation Commission with jurisdiction over restricted Indian land. However, nowhere in the Oklahoma statutes nor in the rules and regulations of the Oklahoma Corporation Commission is there language attempting to assume proprietary powers over restricted Indian land. On the contrary, the third paragraph of Section 3 of the Oklahoma Enabling Act, Act of June 16, 1906 (34 Stat. 267) required that the proposed Oklahoma Constitution contain a disclaimer clause. Section 3 of Article I of the Oklahoma Constitution contains such disclaimer clause:

> "The people inhabiting the State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States. . . ."

The Oklahoma Supreme Court properly stated that "Oklahoma's disclaimer of right and title to Indian lands is a disclaimer of proprietary rather than governmental interests. " 'The State may well waive its claim to any right or title to the lands and still have all of its political or police power with respect to the actions of the people on those lands, as long as that does not affect the title to the land.' " *Organized Village of Kake* v. *Egan*, 369 U.S. 60, 82 S.Ct. 562, 7 L.Ed.2d 573 (1962), cited in *Currey* v. *Corporation Commission of Oklahoma*, 617 P.2d 177, 180 (Okl. 1980).

The Oklahoma Corporation Commission has not attempted, nor is it attempting here, to assume proprietary power over restricted Indian land. The Respondents contend that the Oklahoma Corporation Commission has the authority, under the police power of the state, to impose certain duties and responsibilities on operators of oil and gas wells located within Oklahoma. The duty and responsibility of properly plugging oil and gas wells rests with the operator of such wells and is not an obligation touching the land itself, the Indian or tribal owner or the federal government. The Court stated in *Amax Petroleum Corporation* v. *Corporation Commission*, 552 P.2d 387 (Okl. 1976):

> " . . . thus, the person to plug the well is the lease operator, not a stranger to the operations . . ."

This is not to say, however, that the same result would obtain were the operator an Indian operator/owner on restricted Indian land, in which case resort would have to be had to the various statutes and regulations delineating federal jurisdiction, state jurisdiction and tribal jurisdiction.

That issue is not presented here. The issue that is presented, whether the Oklahoma Corporation Commission has authority to order a non-Indian operator of wells on restricted Choctaw land to plug such wells, is not a substantial federal question and is not the type of case which need be brought before this Court. *Southern California Edison Company* v. *Herminghaus,* 275 U.S. 486, 48 S.Ct. 27, 72 L.Ed. 387 (1927).

In addition, the Oklahoma Supreme Court held that the Oklahoma Corporation Commission has the authority to order such plugging under the oil and gas statutes of Oklahoma thereby providing an independent adequate nonfederal ground as a basis for supporting the judgment rendered below. *Johnson* v. *Thornburgh,* 276 U.S. 601, 48 S.Ct. 322, 72 L.Ed. 725 (1928). This Court has also dismissed a writ of certiorari as improvidently granted in a case where it was debatable whether the judgment below was supported by an independent adequate nonfederal ground. *Stembridge* v. *Georgia,* 343 U.S. 541, 72 S.Ct. 834, 96 L.Ed. 1130 (1952).

Further, Rule 17 of the Supreme Court Rules provides that one ground for review on writ of certiorari is "(w)hen a state court . . . has decided an important question of federal law which has not been, but should be, settled by this Court, . . ." This Court stated in *Rice* v. *Sioux City Cemetery,* 349 U.S. 70, 74, 75 S.Ct. 614, 99 L.Ed. 897 (1955):

> "A federal question raised by a petitioner may be 'of substance' in the sense that abstractly considered, it may present an intellectually interesting and solid problem. But this court does not sit to satisfy a scholarly interest in such issues."

The Court concluded at 76-77 that "[h]ad the statute been properly brought to our attention and the case thereby put into proper focus, the case would have assumed such an isolated significance that it would hardly have been brought here in the first instance."

If this case is put in proper focus, it is not a case posing a federal question proper for this Court's consideration.

II.

THE OKLAHOMA CORPORATION COMMISSION IS AUTHORIZED TO PRESCRIBE RULES AND REGULATIONS FOR THE PLUGGING OF ALL ABANDONED OIL AND GAS WELLS AND TO ENFORCE SUCH RULES AS A VALID EXERCISE OF THE STATE'S POLICE POWER.

The extent of the Oklahoma Corporation Commission's authority under the police power of the state is well-settled. In *Gannon* v. *Mobil Oil Company,* 573 F.2d 1158, 1162 (10th Cir. 1978), *cert. den.* 439 U.S. 867, 99 S.Ct. 192, 58 L.Ed.2d 177, the Court stated:

> "The Oklahoma Corporation Commission was created by Article IX of the Oklahoma Constitution in 1907. Under present day statutes, the Commission has broad power to prescribe rules and regulations governing the plugging of all abandoned oil and gas wells. * * * The authority of the Oklahoma Corporation Commission, under the governing statutes, has been consistently recognized in the rule making area to be that of promulgating rules requiring adequate and proper plugging and abandonment of an oil and gas well under the state's police power in order to prevent waste and pollution and to provide for the safety of the public generally. *Wakefield* v.

State, 306 P.2d 305 (Okl. 1957); *Sheridan Oil Company* v. *Wall,* 187 Okl. 398, 103 P.2d 507 (1940); *Magnolia Petroleum* v. *Witcher,* 141 Okl. 175, 284 P. 297 (1930)."

As early as 1928, the Oklahoma Supreme Court found adequate authority for the exercise of the state's police power under Section 8015, O.S. 1921, the present Title 17, Section 53. The Court stated in *Bryan* v. *State,* 133 Okl. 213, 271 P. 1020, 1021 (1928), that "There is no controversy as to the jurisdiction or power of the Corporation Commission to order and enforce the plugging of an abandoned oil and gas well, nor as to its authority to prescribe rules and regulations therefor."

Since the Corporation Commission's authority and jurisdiction is limited to only "such jurisdiction and authority as is expressly or by necessary implication conferred upon it by the Constitution or statutes of this state," *Planters' Cotton & Ginning Company* v. *West Brothers,* 82 Okl. 145, 198 P. 855 (1921), *Oklahoma City* v. *Corporation Commission,* 80 Okl. 194, 195 P. 498 (1921), "the courts, therefore, should be careful and neither attempt to enlarge nor take from the jurisdiction conferred on the Commission." *Atchison, T. & S.F. Ry. Company* v. *Corporation Commission,* 68 Okl. 1, 170 P. 1156, 1159 (1914).

III.

THE OKLAHOMA CORPORATION COMMISSION'S RULES AND REGULATIONS REGARDING THE PLUGGING OF ALL ABANDONED OIL AND GAS WELLS IMPOSES A RESPONSIBILITY AND DUTY UPON THE OPERATOR OF SUCH WELLS AND DOES NOT ATTACH TO THE LAND ITSELF.

Since the early days of statehood, Oklahoma has been concerned with the conservation of oil and gas. To this end, one of the first conservation statutes enacted was a plugging statute which required the use of cedar plugs in plugging operations. Okla. Laws 1909, c. XXVI, art. II, sec. 7a. In 1917, the Oklahoma Corporation Commission, by Order No. 1299, issued a regulation as to the manner of plugging wells and required an operator to notify a Commission field inspector so that such inspector would be present to see that the well was properly plugged. However, in subsequent years, and in response to the problem of unscrupulous operators and their disregard of plugging regulations, the Commission; in 1946, by Order No. 19334, issued regulations which required that no person could plug a well without being licensed by the Corporation Commission. The plugging statutes of Oklahoma have changed somewhat through the years culminating in the present plugging statutes found at Title 52, Sections 309 through 318.1, and such statutes must be read in conjunction with Title 17, Section 53, which authorized the Corporation Commission to promulgate rules and regulations regarding the plugging of wells, and the rules and regulations promulgated by that authority. In all cases, the plugging statutes of this state may be interpreted as im-

posing the duty and responsibility upon the operator to properly plug the wells.

Although Petitioners' brief is exhaustive in reference to United States constitutional grounds and federal statutory and regulatory grounds, there appears little that is applicable to the question presented herein, since the order complained of imposes a duty on the operator and does not attach to the land itself. Nowhere in Petitioners' brief is this issue addressed nor is there any discussion or argument on the laws of Oklahoma or the rules and regulations of the Oklahoma Corporation Commission regarding plugging.

The case of *Salmon Corporation* v. *Forest Oil Corporation*, 536 P.2d 909 (Okl. 1975), is of relevance to the issue in this cause. In *Salmon*, the plaintiff sought to recover damages in recoupment of its costs in reentering and plugging, or replugging, 71 old wells previously operated by its predecessors. All of the wells were located on land which belonged to the Osage Tribe. The plugging requirements followed by the predecessor were those prescribed by the Osage Indian Agency. On appeal, Salmon urged that the predecessor was required to comply with the Oklahoma Corporation Commission rules regarding plugging as well as the regulations of the Osage Indian Agency. The Court, at 913, found "no reversible error in the trial court's failure to so instruct the jury because Salmon points to no Commission rule or regulation *imposing a greater duty* on those in Forest's situation then (*sic*) imposed by the Osage Agency's requirements." (Emphasis added). Although *Salmon* concerns wells drilled on Osage land and, therefore, under the regulations of the Osage Indian Agency,

and not the U.S.G.S., the language of the Court, nevertheless indicates that where a greater duty is imposed by the Oklahoma Corporation Commission rules, compliance must be made with such Commission rules.

At the time the wells in question herein were plugged, 25 CFR Sec. 174.33, under the auspices of the U.S.G.S., required the lessee "to plug securely all wells before abandoning the same and to shut off effectually all water from the oil or gas-bearing strata." This was also the scope of the Commission rules at the time the wells were plugged. However, in addition, the Oklahoma Corporation Commission rules, at that time, specifically required that the open hole below the casing shoe be filled with mud or cement to a point 25 feet above the shoe or, if impractical, a 25-foot plug be set extending at least 25 feet above the casing shoe; no surface casing was to be pulled unless authorized by the Commission; and a plug or seal was to be placed at the surface so as not to interfere with soil conservation. At the hearing before the trial examiner of the Corporation Commission, a witness for the Commission testified that if the 5½-inch casing was cemented and left in the hole and cement placed in the bottom and the top according to the rules, the plugging should hold against flood injection. These plugs did not hold. Whether such failure was due to improper plugging is undocumentable because the Corporation Commission did not receive the required notice of intent to plug, therefore, a Corporation Commission field inspector could not be present, as required by the rules, to witness the plugging and report thereon.

Therefore, under the Court's finding in *Salmon*, Petitioners herein were required at the time of plugging to

also comply with the rules and regulations of the Commission. It should be noted at this point that Petitioners were aware of the Corporation Commission's rules and regulations in that Petitioners did file a plugging report, albeit improper, on the Sophie Harrison B-1.

In *Minshall* v. *Corporation Commission*, 485 P.2d 1058 (Okl. 1971), Minshall attacked the validity of a Corporation Commission order requiring him to plug or repair an oil or gas well that had been abandoned and plugged in 1941, and that was later found to be leaking gas. The court, at 1060, found the purpose and intent of 52 O.S. Sections 309 through 317, enacted in 1965:

> "was to protect the waters and lands within this state against pollution caused by salt water, oil, gas, or other deleterious substances, presently leaking from abandoned wells, by providing a means whereby such presently-leaking wells 'may be plugged, replugged, or repaired; by or under the authority and direction of the Corporation Commission,' without affecting any existing means or remedy. * * * The 1965 act was intended to apply, and does apply, with respect to, any and all abandoned wells which are presently leaking salt water, oil, gas or other deleterious substances. If an abandoned well is not presently leaking any of those substances, the act has no application thereto. If it is presently leaking any of those substances, it makes no difference that the well has been plugged, or when it was plugged. *If the well has been plugged, the question of whether or not it was properly plugged in accordance with the then-effective rules and regulations of the Commission is not involved.*" (Emphasis added.)

However, the Court went on to state that it could not sustain that portion of the Commission order requiring Minshall to replug or pay for the cost of replugging since the Commission was not authorized to require any one to do the remedial work or to determine who that person may be.

Minshall was explained and clarified eight years later in *Ashland Oil, Inc.* v. *Corporation Commission,* 595 P.2d 423 (Okl. 1979). During that eight-year period, the Legislature, in 1970, amended 52 O.S. Sec. 310 to provide:

> "* * * (b) that the operator or any other person responsible for plugging, replugging or repairing the well in such manner as is necessary to prevent further pollution cannot be found, or is finacially unable to pay the cost of performing such work * * *."

The Court stated, at 425, that:

> "Without question, this provision supplies the explicit legislative imposition of the *operator's* liability for 'plugging, replugging or repairing' which was found missing at the time *Minshall* was decided. Consideration of this provision together with numerous other statutory declarations leaves absolutely no room for doubt that the Corporation Commission has the statutory power to order an operator to replug wells which were improperly plugged."

Of particular importance is the case of *Amax Petroleum Corporation* v. *Corporation Commission*, supra, wherein the Corporation Commission ordered the plugging of certain gas wells which had been abandoned by the operator in 1957. About two years after abandonment, the operator assigned the lease to the landowner. The Court stated at 391:

> "Thus, the person to plug the well is the lease operator, not a stranger to the operation; and the time to plug is when the well is abandoned and certainly not before."

In response to the appellant's contention that the delay by the Corporation Commission in filing the application for such order should relieve the operator of his responsibility in the matter, the Court stated at 392 that "while this delay is unfortunate, no reason is presented to us as to why this would set aside the lease owner-operator's duties and obligations and we see none. The delay resulted in the failure to plug the wells which the Corporation Commission has held is the appellant's obligation."

The rule that the lease operator is responsible for the plugging of the well has been affirmed at the federal level in *Gannon* v. *Mobil Oil Company,* supra, at 1162:

> "Oklahoma law provides that upon abandonment of an oil well the owner or operator is obligated, responsible and liable for plugging the well in accordance with the applicable rules of the Corporation Commission. 17 Okla. Stat. Ann. 1971, Sec. 53; 52 Okla. Stat. Ann. 1971, Sections 273, 309 and 310; OCC-OGR Sec. 3-401(a); *Loriaux* v. *Corporation Commission,* 514 P.2d 941 (Okl. 1973); *United States* v. *79.95 Acres of Land, etc., Rogers County, Okl.,* 459 F.2d 185 (10th Cir. 1972); *Bryan* v. *State,* 133 Okl. 213, 271 P. 1020 (1928)."

IV.

PUBLIC LAW 80-336, FOUND IN 61 STAT. 731, ACT OF AUGUST 4, 1947, CH. 458, EVIDENCES CONGRESS' INTENT THAT ALL OIL AND GAS CONSERVATION LAWS OF THE STATE OF OKLAHOMA APPLY TO ALL RESTRICTED LANDS OF THE FIVE CIVILIZED TRIBES.

Section 11 of Public Law 80-336, 61 Stat. 731, Act of August 4, 1947, ch. 458, provides:

> "Sec. 11. All restricted lands of the Five Civilized Tribes are hereby made subject to all oil and gas conservation laws of Oklahoma: Provided, That no order of the Corporation Commission affecting restricted Indian land shall be valid as to such land until submitted to and approved by the Secretary of the Interior or his duly authorized representative."

It is the Respondents' contention that the proviso found in Section 11 is inapplicable to the case since the order issued by the Corporation Commission does not affect restricted Choctaw land but only the operator, Currey & Currey. However, Petitioners contend that said Section 11 is applicable herein and contend the proviso acts as a nullifier. To determine which contention is correct resort must be had to the rules of statutory construction found in the following cited cases.

In *United States* v. *Wewoka Creek W. & S. Con. Dist. No. 2 of Okl.*, 222 F.Supp. 225 (E.D. Okl. 1963), the Court sought to construe another proviso found in the Act of August 4, 1947. That proviso was found in Section 6(b) of the Act regarding tax exemptions. The question presented in *Wewoka Creek* was the same question presented here:

what is the intent and meaning of Congress as to the proviso? The Court stated at 230:

> "It is generally stated that the purpose of a proviso engrafted upon a preceding enactment is to restrict or modify the enacting clause or exempt something from its operation, but such is not always the purpose. The cardinal rule in construing a statute is that the Court must ascertain and give effect to the legislative intent, and this rule applies equally well to the construction of provisos. The enacting clause and the provisos should be construed together with a view to giving effect to each in carrying out the intention of the legislature as manifested in the entire Act."

The Court in the case of *Motorlines, Ltd.* v. *United States,* 215 F.Supp. 345 (N.D. Ohio 1963), was also presented with a question as to the correct interpretation of a proviso. In *Motorlines,* the Court stated at 348:

> "It is true that the natural and appropriate office of a proviso is to modify that portion of the statute immediately preceding it. 50 Am.Jur., Sec. 38, p. 459. However, a proviso should be given a broader application when it is clear that the legislature so intended. Ibid. Here the proviso does not serve to qualify the statute. It introduces new matter rather than limiting or explaining that which had gone before. 50 Am.Jur., Sec. 456. In *Georgia R.R. & Banking Co.* v. *Smith,* 128 U.S. 174, 9 S.Ct. 47, 32 L.Ed. 377, the Supreme Court had this to say about provisos:
>
> " 'The general purpose of a proviso, as is well known, is to except the clause covered by it from the general provisions of a statute, or from some provisions of it, or to qualify the operation of the

> statute in some particular. But it is often used in other senses. It is a common practice in legislative proceedings, on the consideration of bills, for parties desirous of securing amendments to them, to precede their proposed amendments with the term 'provided,' so as to declare that, notwithstanding existing provisions, the one thus expressed is to prevail, thus having no greater signification than would be attached to the conjunction 'but' or 'and' in the same place, and simply serving to separate or distinguish the different paragraphs or sentences. Several illustrations are given by counsel of the use of the term in this sense, showing, in such cases, where an amendment has been made, though the provision following often has no relation to what precedes it.' (p. 181, 9 S.Ct. p. 49)"

Further, in *Gruver* v. *Secretary of Health, Education and Welfare,* 426 F.2d 1195 (Ct. App. D.C. 1969), *cert. den.* 397 U.S. 977, 90 S.Ct. 1092, 25 L.Ed.2d 272 (1970), the Court states that "as a general proposition, a proviso presumably refers only to the provision to which it is annexed, but this presumption, like all others, must invariably yield to the cardinal principle that the intention of the legislature must be heeded. A proviso escapes the narrow confines of its parent provision if to so imprison it would frustrate expressed or inferable legislative aims."

Petitioners herein contend that the proviso found in Section 11 of the Act of August 4, 1947, Public Law 80-336, ch. 458, 61 Stat. 731, is a condition precedent which serves to nullify the general statement preceding it. This is incorrect. By ultilizing the rules of statutory construction found in the above-cited cases, the proviso is clearly a condition subsequent. To paraphrase the provision: All Five

Civilized Tribal lands are subject to all Oklahoma oil and gas conservation laws subject to the procedural command of approval of the Corporation Commission order by the Secretary of the Interior. As in the *Motorlines* case, the proviso "introduces new matter rather than limiting or explaining that which had gone before." Such is the case with the proviso in Section 11. In addition, an order of the Oklahoma Corporation Commission does not issue for enforcement of every oil and gas conservation law of Oklahoma. For example, 52 O.S. Section 296, provides:

> "No inflammable product from any tank, pool or stream used for watering stock; and all waste of oil and refuse from tanks or wells shall be drained into proper receptacles at a safe distance from the tanks, wells or buildings, and be immediately burned or transported from the premises, and in no case shall it be permitted to flow over the land. Salt water shall not be allowed to flow over the surface of the land."

Action taken under this section is to be brought in district court under the provisions of 52 O.S. Section 303.

It was stated by the Court in *Jicarilla Apache Tribe* v. *United States,* 601 F.2d 1116 (10th Cir. 1979), *cert. den.* 444 U.S. 995, 100 S.Ct. 530, 62 L.Ed.2d 426 (1979):

> "It is within the power of the Congress to provide that the laws of a state shall extend over and apply to Indian country and activities thereon, where they clearly do not interfere with federal policies concerning the lands. *Warren Trading Post Co.* v. *Arizona Tax Commission,* 380 U.S. 685, 85 S.Ct. 1242, 14 L.Ed.2d 165 (1965); *Organized Village of Kake* v. *Egan,* 369 U.S. 60, 82 S.Ct. 562, 7 L.Ed.2d 573 (1962)."

In any case, as has been reiterated earlier, the Corporation Commission order herein is directed to a specific operator, Currey & Currey, and does not extend to the federal government, the Indian owner or the land in question.

CONCLUSION

This is not a case of first impression since the Oklahoma Corporation Commission does not seek to obtain regulatory authority over exploration on restricted Indian (Choctaw) land. The Oklahoma Corporation Commission seeks to enforce an order directed against the operators of a well whose responsibility and obligation was to properly plug their wells.

The fact that Oklahoma has not acted to remove its state constitutional disclaimer is irrelevant in this case as the order is directed to the operator of the well and not the land itself. This principle has been repeated throughout this brief in opposition and can be cited against every argument urged by Petitioners.

Respondents pray, therefore, that this Court not grant Petitioners' petition for writ of certiorari.

Respectfully submitted,

By: _____
ALICE SCHAFFER MITCHELL

CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of this Brief in Opposition were mailed to the person listed below on the _____ day of March, 1981, by placing same in the U. S. Mail with postage fully prepaid.

All parties required to be served have been served.

Larry R. Boyd
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II
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Alice Schaffer Mitchell

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

P. W. Currey and Mrs. James D. Currey d/b/a Currey & Currey a/k/a Currey, Shields & Currey,	)	
Appellants,	)	No. 51,906
vs.	)	Filed June 12, 1979
	)	Ross N. Lillard,
Corporation Commission of Oklahoma; Dan R. Dunnett, Director of Conservation for Corporation Commission of Oklahoma,	)	Jr., Clerk Supreme Court State of Oklahoma
Appellees.	)	

Appeal from Order of Corporation Commission directing Appellants to replug abandoned oil and gas wells which are purging salt water onto the surface of the land.

ORDER OF THE CORPORATION COMMISSION AFFIRMED

Manville T. Buford,
Buck, Crabtree, Ransdell & Buford,
Oklahoma City, Oklahoma, For Appellants;

Harvey Cody,
Conservation Attorney,
Nathan S. Sherman,
Assistant Conservation Attorney,
Oklahoma Corporation Commission, For Appellees.

WILLIAMS, J.

Appeal is taken by P. W. Currey and Mrs. James D. Currey d/b/a Currey & Currey a/k/a Currey, Shields & Currey (Appellant/Currey) from Order No. 137283 of the

Corporation Commission (Commission) directing Currey to replug two wells located in Stephens County.

Appellant obtained oil and gas exploration lease rights to restricted Choctaw lands located in Stephens County, Oklahoma. The lease was obtained through the Bureau of Indian Affairs (BIA), which then turned direct supervision to the United States Geological Survey (USGS).

Evidence adduced before the Trial Examiner for the Commission disclosed further that Currey drilled three wells, "Sophie Harrison No. 1," "Sophie Harrison No. B-1" and "Sophie Harrison No. B-2" (wells). All three wells were abandoned in the mid-1950's. The wells were thereafter plugged, and appropriate reports made to USGS. Parties disagree as to the degree of compliance with Commission filing requirements, but both agree that Currey did not fully comply with all Commission filing requirements.

In 1976 Continental Oil Company, an adjacent and contiguous lessee, discovered salt water purging from one of Currey's wells. Continental informed the Commission, which thereafter inspected the site, found one well to be purging and issued a complaint. The complaint was later amended to encompass another well found to be purging.

Extensive testimony was taken by the trial examiner regarding compliance with USGS plugging requirements and conformity to Commission filing requirements. The degree of compliance is not determinative.

It is not disputed that the wells were drilled and operated by Currey over twenty years ago, and that now two of these wells are spewing forth salt water in excess of forty barrels a day onto the land.

Appellant contends generally that the Corporation Commission has no jurisdiction to order reworking or replugging of wells because the wells are located on restricted Indian lands under exclusive jurisdiction of the Federal Government.

Appellant Currey further argues that even if the Federal Government lacks exclusive jurisdiction, still the Commission is without statutory authority to compel replugging. We shall deal with the second argument first.

Appellant relies heavily on *Minshall* v. *Corporation Commission*, Okl., 485 P.2d 1058 (1971), which has been further clarified by *Ashland Oil, Inc.* v. *Corporation Commission*, ___ P.2d ___. *Ashland supra* clarifies *Minshall* and addresses itself more specifically to such facts as are involved in the case at bar as follows:

> Ashland urges on appeal that Minshall v. Corporation Commission, Okl. 485 P.2d 1058 (1971) controls. In *Minshall*, the Corporation Commission found that a well drilled, plugged, and abandoned by Minshall was leaking gas through and onto the ground. Apparently relying upon 52 O.S. Supp. 1965, Sec. 310[1], the Commission ordered Minshall to replug the well.
>
> On appeal, the *Minshall* court stated in its syllabus: 'Neither 17 O.S. 1961, Sec. 53, nor any of the provision of Senate Bill No. 396 of the Thirtieth (1963) Oklahoma Legislature (Chapter 191 O.S.L. 1965; 52 O.S. Supps. 1965-1969, Sections 309 through 317) imposes upon any one an obligation to replug, or repair, an abandoned well that has been plugged but is presently leaking salt water, oil, gas, or other deleterious substances.'
>
> . . . At page 1061 of *Minshall*, we read: * * * If the well has been plugged, the question of whether or not it was properly plugged in accordance with the then-effective rules and regulations is not involved.'

---

[1] Amended by Laws 1970, c.217, Sec. 2.

> Additionally, as the Commission correctly points out, the Court in *Minshall* clearly limited its consideration to the application of 52 O.S. Supps. 1965-1969, Sections 309-315 on the question of an operator's responsibility and did not concern itself with amendments to that Act enacted subsequent to the order of the Commission or with any other existing statutes.
>
> For purposes of the instant action it is important to note that the Court did not consider the impact of the 1970 Amendment to Sec. 310 (Laws 1970, ch. 217, Sec. 2) which provides: '* * * (b) that the operator or any other person responsible for plugging, replugging or repairing the well in such manner as is necessary to prevent further pollution cannot be found, or is financially unable to pay the cost of performing such work. * * *'
>
> Without question, *this provision supplies the explicit legislative imposition of the operator's liability for 'plugging, replugging or repairing' which was found missing at the time of Minshall was decided.* Consideration of this provision together with numerous other statutory declarations[2] leaves absolutely no room for doubt that the Corporation Commission has the statutory power to order an operator to replug wells which were improperly plugged. * * * (Emphasis added).

The record reveals the Commission's finding that the wells were not properly plugged was supported by substantial evidence. This Court is not required to weigh the evidence on appeal, but to review the evidence and affirm the order where the finding and conclusions of the Com-

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[2] 17 O.S. 1971, Sections 51, 53; 52 O.S. 1971, Sections 86.2, 86.3, 236-247, 271-279, 309-320; 52 O.S. Supp. 1975, Sec. 102.

mission are sustained by law and substantial evidence. O.S. 1971 Const. Art. 9 Sec. 20; *Superior Oil Co.* v. *Oklahoma Corporation Commission*, Okl., 242 P.2d 454 (1952). Assuming Oklahoma has jurisdiction over wells drilled on restricted Indian land, the Commission has the authority to order reworking or replugging of these wells, and we so hold.

Next requiring attention is appellant's second major argument that because the wells were drilled on restricted Indian lands Oklahoma is without jurisdiction.

Currey cites as authority O.S. 1971 Const. Art. I sec. 3 as follows:

> The people inhabiting the State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States.

and Public Law No. 83-280, 67 Stat. 588 (1953), which in pertinent part states:

> Sec. 6 Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, *where necessary*, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of the Act: * * *. (Emphasis added).

Appellant simply argues that the Constitutional impediment under Sec. 3 *supra* has not been properly removed by any Constitutional amendment. Appellant proceeded on the assumption that if a right is held by the Federal

Government and later abrogated, then there must be an affirmative corresponding state enactment to fill the void. This assumption is erroneous.

A federal district court held[3] in construing P.L. 280 *supra* that: "Congress, under the constitutional power to regulate commerce with the Indians, has preempted the field of regulation of Indian land *to the extent that such is necessary* to protect the Indians' rights therein and to preserve title thereto until the day when the Indian has developed culturally to a point where he can deal and manage his own affairs."

The Court goes on further to say that, "Congress in recent years has recognized that Indians in some states, . . . have reached a state of acculturation where some federal controls might properly be relaxed. * * * Public Law 280, like other similar laws in recent years, is a withdrawal by Congress from its preemption in this field. It has done so in this case by express grant to the state of authority, among other things, to exercise its police power in such a way as to impose upon Indian lands the same regulations imposed upon all lands within the boundaries of the state. To the extent that any further withdrawal by the Federal Government occurs, the sovereignty of the state becomes enlarged to *that extent.*" (Emphasis added).

In 1947, prior to the drilling and plugging of the wells in question, Public Law 80-336, found in 61 Stat. 731, Act of August 4, 1947 Ch. 459, was passed by the Congress of the United States. Section 11 of said Act specifically withdraws Congress from preemption in the field of oil and gas conservation and thereby enlarged the sovereignty of Oklahoma to that extent. It reads:

---

[3] The Agua Caliente Band of Mission Indians' Tribal Council et al. v. The City of Palm Springs, etc., et al., (D.C., Cal.), 347 F.Supp. 42 (1972).

"11. All restricted lands of the Five Civilized Tribes are hereby made subject to *all* Oil and Gas Conservation laws of the State of Oklahoma; . . ." (Emphasis added).

No affirmative statutory enactment was necessary for Oklahoma to assume jurisdiction abrogated by the federal government.

The United States Supreme Court in Organized Village of Kake v. Egan, 369 U.S. 60 (1962), in an opinion by Mr. Justice Frankfurter, construed an Alaskan conservation law, in light of a Constitutional provision similar to Oklahoma's Article I, Sec. 3. Indian communities brought an action against the Governor of Alaska to enjoin enforcement of the Alaska Anti-Fish Trap Conservation Law.

The principal dispute concerned, ". . . the meaning of sec. 4 of the Statehood Act, in which the State disclaimed all right and title to and the United States retained absolute jurisdiction and control over, inter alia, 'any lands or other property . . ., the right or title to which may be held by any Indians . . .' or is held by the United States in trust for said natives." Organized Village of Kake, *supra*, at p. 565.

The Court states further at page 567 that:

> Although the reference to fishing rights is unique, the retention of 'absolute' federal jurisdiction over Indian lands adopts the formula of nine prior statehood acts. Indian lands in Arizona remained 'under the absolute jurisdiction and control' of the United States, 36 Stat. 557; Yet in Williams v. Lee, 358 U.S. 217, 220, 223, 79 S.Ct. 269, 270, 272, 3 L.Ed.2d 251, we declared that the test of whether a state law could be applied on Indian reservations there was whether the application of that law would interfere with reservation self government. The identical language appears in Montana's Admission Act, 25 Stat. 676, 677. Yet in Draper v. United States, 164 U.S. 240, 17 S.Ct. 107, 41 L.Ed. 419, the Court held that

a non-Indian on a Montana Reservation could be prosecuted only in the state courts. * * *

Draper and Williams indicate that *'absolute' federal jurisdiction* is *not* invariably *exclusive jurisdiction.* (Organized Village of Kake, *supra.*) (Emphasis added).

Oklahoma's disclaimer of right and title to Indian lands is a disclaimer of proprietary rather than governmental interests. "The State may well waive its claim to any right or title to the lands and still have all of its political or police power with respect to the actions of the people on those lands, as long as that does not affect the title to the land." *Kake, supra.*

We hold that the power of the Corporation Commission to regulate oil and gas conservation measures under the laws of the state on restricted Indian lands and order appellant to replug purging wells, is not precluded by the federal jurisdiction. Our Constitutional mandate contained in O.S. 1971 Art. I Sec. 3 stating that Indian lands "shall be and remain subject to the jurisdiction, disposal, and control of the United States", envisions undiminished and not exclusive jurisdiction. We so hold.

CONCUR: Hodges, Barnes, Simms, Doolin and Hargrave, JJ.

CONCUR BY REASON OF STARE DECISIS: Lavender, C.J. and Opala, J.

APPENDIX B

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

P. W. Currey and Mrs. James D. Currey d/b/a Currey & Currey a/k/a Currey, Shields & Currey,	)	
	)	No. 51,906
Appellants,	)	
	)	Filed September
vs.	)	22, 1980
	)	Ross N. Lillard,
Corporation Commission of Oklahoma; Dan R. Dunnett, Director of Conservation for Corporation Commission of Oklahoma,	)	Jr., Clerk
	)	Supreme Court
	)	State of Oklahoma
	)	
Appellees.	)	

CORRECTION ORDER

It is hereby ordered that the typewritten opinion of this Court filed and promulgated in the above styled case on the 12th day of June 1979, be ordered to be corrected and that is corrected as hereinafter set forth, that is to say that in the ninth line of page 6 of such typewritten opinion next following the end of the partial quotation which concludes with the words and grammatical symbol, to-wit: State of Oklahoma and next preceding the grammatical symbols and words, to-wit: . . . "(Emphasis added)., there be inserted (in lieu of the ellipsis symbol)' the following words and grammatical symbols, to-wit: Provided, that no order of the Corporation Commission affecting restricted Indian land shall be valid as to such land until submitted to and approved by the Secretary of the Interior or his duly authorized representative.

It is further ordered that the vote of the Justices shown at the conclusion of such typewritten opinion (in

addition to the name of the author of the opinion occurring at the commencement of the body thereof) be corrected as follows:

BARNES, SIMMS, DOOLIN, and HARGRAVE, JJ. concur.

LAVENDER, C.J., and OPALA, J., concur by reason of stare decisis.

HODGES, J., dissents.

It is further ordered that such opinion and such language added and with said ellipsis symbol deleted (and as heretofore ordered corrected and so corrected, including correction of the vote of the Justices), shall otherwise remain in full force and effect.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE this 22nd day of September, 1980.

s/ Robert E. Lavender
Chief Justice

APPENDIX C

Oklahoma Statutes, Title 17, Section 53

Section 53. Rules and regulations — Plugging wells.

The Corporation Commission is hereby authorized to prescribe rules and regulations for the plugging of all abandoned oil and gas wells. The same shall be plugged under the direction and supervision of the conservation agents of the Corporation Commission. All orders and regulations in reference to plugging wells shall be made after general hearing as now prescribed by law for the promulgation of orders by the Corporation Commission.

Laws 1917, c.207, p.385, Sec. 3. C.S. 1921, Sec. 8015; St. 1931, Sec. 3671.

Oklahoma Statutes, Title 52, Sections 309 through 318.1

Section 309. Findings and declarations

The Legislature finds and declares that it is in the public interest to protect the waters and lands of the state against pollution and, for that purpose, it is necessary and desirable in the exercise of the police power of the state to provide additional means whereby wells drilled for the exploration, development, or production of oil or gas, or as injection or disposal wells, and which are causing surface or subsurface pollution of any fresh water or are leaking salt water, oil, gas or other deleterious substances upon the surface of the land, may be plugged, replugged, or repaired by the Corporation Commission or under the authority and direction of the Corporation Commission, hereinafter called "Commission."

Laws 1965, c.191, Sec. 1, eff. June 8, 1965. Amended by Laws 1970, c.217, Sec. 1, emerg. eff. April 15, 1970.

Section 310. Leaking wells — Entry upon land to plug, replug or repair — Emergencies

If after notice and hearing the Commission finds:

(a) that a well drilled for the exploration, development, or production of oil or gas, or as an injection or disposal well, is causing surface or subsurface pollution of any fresh water or is leaking salt water, oil, gas or other deleterious substances onto the surface of the land in the vicinity of the well; and

(b) that the operator or any other person responsible for plugging, replugging or repairing the well in such manner as is necessary to prevent further pollution cannot be found, or is financially unable to pay the cost of performing such work,

then the Commission or any person who is so authorized by the Commission may enter upon the land upon which such well is located and plug, replug, or repair such well as may be reasonably required to remedy such condition. If in the case of an emergency or if it otherwise appears to the Commission that irreparable injury will result if immediate remedial action is not taken, such entry upon the land may be made or authorized by the Commission, without notice or hearing, for the purpose of taking such temporary remedial action as the Commission may consider to be necessary to prevent or minimize such injury pending the giving of notice and hearing. Such operation shall be conducted in the manner prescribed by the Commission.

Laws 1965, c.191, Sec. 2, eff. June 8, 1965. Amended by Laws 1970, c.217, Sec. 2, emerg. eff. April 15, 1970.

Section 311. Liability for damages

Any person entering upon the land on which the well is located to plug, replug, or repair the same, pursuant to the authority and in accordance with the order of the Com-

mission, shall not be liable or held responsible for any damages resulting from operations reasonably necessary or proper to plug, replug, or repair the well, except damages to growing crops and improvements.

Laws 1965, c.191, Sec. 3, eff. June 8, 1965.

Section 312. Responsibility for future remedial work

Any person who plugs, replugs, or repairs a well in accordance with an order of the Commission under this act shall not be held to have assumed responsibility for future remedial work on said well or be liable in damages or otherwise for conditions subsequently arising from or in connection with said well.

Laws 1965, c.191, Sec. 4, eff. June 8, 1965.

Section 313. No admission of liability or discharge of action

The fact that any person has initiated or supported a proceeding before the Commission or has remedied or attempted to remedy the condition of any well under the authority of this act shall not be construed as an admission of liability or received in evidence against such person in any action or proceeding wherein responsibility for or damages from surface or subsurface pollution, or injury to any fresh water or oil or gas bearing formation is or may become an issue, nor shall such fact be construed as releasing or discharging any action, cause of action, or claim against such person existing in favor of any third person for damages to property resulting from surface or subsurface pollution, or injury to any fresh water or oil or gas bearing formation.

Laws 1965, c.191, Sec. 5, eff. June 8, 1965.

Section 314. Right of action for costs involved — Lien

Any person who had no obligation to plug, replug, or repair the well but who does so under the provisions of this act shall have a cause of action against the person or

persons who by law were obligated to properly plug, replug, or repair the well for the reasonable cost and expense incurred in plugging, replugging, or repairing the well, and shall have a lien upon the interest of such obligated person or persons in and to the oil and gas rights in the land and equipment located thereon.

Laws 1965, c.191, Sec. 6, eff. June 8, 1965.

Section 315. Supplemental remedy

Nothing in this act shall relieve any person or persons otherwise legally responsible from any obligation to properly plug, replug, or repair a well and shall not limit the authority of the Commission to require the proper plugging, replugging, or repair of the well, but is intended as a supplemental remedy when any person or persons obligated to do so fail or cannot be made to do so.

Laws 1965, c.191, Sec. 7, eff. June 8, 1965.

Section 316. Proceedings

All proceedings under this act including the filing of applications, giving of notices, the conduct of hearings and other action taken by the Commission, and appeals therefrom shall be in the form and manner and in accordance with the procedure provided in Sections 84 to 135, inclusive, Title 52 O.S. 1961, or any amendment thereof.

Laws 1965, c.191, Sec. 8, eff. June 8, 1965.

Section 317. "Person" defined

The term "person" as used in this act means any individual, business association or corporation, partnership, governmental or political subdivision, public corporation, body politic and corporate public authority, trust or any other legal entity.

Laws 1965, c.191, Sec. 9, eff. June 8, 1965.

Section 318. Remedial work — Contracts upon competitive bids

When the Commission undertakes to plug, replug, or repair any well or wells, as authorized and provided in Title 52 of the Oklahoma Statutes, Sections 309 and 310, all such remedial work shall be done by contracts let upon competitive bids. The Commission shall not expend from the Conservation Fund or any other fund in the State Treasury, in any fiscal year, for the purposes herein provided, an amount of money in excess of the total sum specifically authorized annually by the Legislature for such purposes.

Laws 1970, c.217, Sec. 3, emerg. eff. April 15, 1970.

Section 318.1. Agreement as to compliance with drilling and plugging regulations — Recovery of costs

Any person who drills or operates any well for the exploration, development or production of oil or gas, or as an injection or disposal well within the State of Oklahoma, shall furnish on forms approved by the Corporation Commission, his agreement in writing to drill, operate and plug wells in compliance with the rules and regulations of the Commission and the laws of the State of Oklahoma together with his financial statements showing his net worth is not less than Ten Thousand Dollars ($10,000.00) within the State of Oklahoma. Said financial statement to be made current semiannually. The agreement shall provide that if the Commission determines that he has neglected, failed, or refused to operate, plug or replug any well or operate any facility in compliance with the Commission's said rules and regulations he will forfeit or pay to the state, through the Commission, for deposit in the State Treasury, a sum equal to the cost of plugging the well, and the Commission may cause such remedial work to be done, issuing warrant in payment of the cost thereof drawn upon the State Treasury against the monies accruing therein from the forfeiture. Any monies accruing to the State Treasury by

reason of a determination that there has been a noncompliance with the provisions of said agreement or the rules and regulations of the Commission, in excess of the cost of remedial action ordered by the Commission, shall be credited to the Conservation Fund. The Commission shall also recover any costs arising from litigation necessary to the enforcement of this provision.

Added by Laws 1971, c.25, Sec. 1, emerg. eff. March 22, 1971.

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No. 80-1010

In the Supreme Court of the United States

OCTOBER TERM, 1980

P.W. CURREY AND MRS. JAMES D. CURREY d/b/a CURREY & CURREY a/k/a CURREY, SHIELDS & CURREY, PETITIONERS

v.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

TABLE OF AUTHORITIES

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In the Supreme Court of the United States

OCTOBER TERM, 1980

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P.W. CURREY AND MRS. JAMES D. CURREY d/b/a CURREY & CURREY a/k/a CURREY, SHIELDS & CURREY, PETITIONERS

v.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted in response to the Court's order of April 27, 1981, inviting the Solicitor General to express the views of the United States with respect to the case.

1. In the early 1950's, petitioners obtained oil and gas lease rights to certain restricted Indian lands in Stephens County, Oklahoma (Pet. App. C). The lease was approved by the Bureau of Indian Affairs (BIA) for Sophie Harrison, an enrolled member of the Choctaw Tribe, one of the Five Civilized Tribes of Oklahoma. Upon execution of the lease and posting of the required surety, the BIA turned direct supervision of the lease over to the United States Geological Survey (USGS). Thereafter, petitioners drilled three wells on the land. The wells were abandoned in the mid-1950s and

plugged in accordance with USGS requirements. The USGS approved the plugging and recommended to the BIA that petitioners' bond be released, which was done shortly thereafter (Pet. App. C).

In 1974, one of the wells began purging salt water. In 1976, after attempts to replug the well by third parties (not parties here or below) failed, a representative of respondent Oklahoma Corporation Commission inspected the site and filed a complaint against petitioners with the Corporation Commission. The complaint was later amended to include another well also found to be purging salt water. Petitioners received notice of the complaint and appeared before the Corporation Commission. In those proceedings, however, petitioners challenged the Corporation Commission's jurisdiction over oil and gas exploration activities on restricted Indian land. Their objections were overruled, and on January 10, 1978, the Commission issued its order (No. 137283) directing petitioners to replug the wells (Pet. App. A).

Petitioners appealed the order to the Supreme Court of Oklahoma contending, in part, that the Corporation Commission lacked jurisdiction over the restricted Indian lands (Pet. App. B). The Supreme Court rejected petitioners' contentions, and on June 12, 1979, it affirmed the Corporation Commission's order (Pet. App. C).[1]

2. By virtue of Section 11 of the Act of August 4, 1947, ch. 458, 61 Stat. 734, the restricted lands in question are subject to Oklahoma oil and gas conservation laws. In

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[1]By orders dated September 22, 1980, the Supreme Court of Oklahoma corrected its opinion to include the full quotation of the section of the Act of August 4, 1947, ch. 458, 61 Stat. 734, set forth on page 3, *infra*, and denied petitioners' petition for rehearing (Pet. Apps. E and F).

addition, all orders of the Corporation Commission affecting such lands are valid, once approved by the Secretary of the Interior or his duly authorized representative.[2] Section 11 provides:

> All restricted lands of the Five Civilized Tribes are hereby made subject to all oil and gas conservation laws of Oklahoma: *Provided*, That no order of the Corporation Commission affecting restricted Indian land shall be valid as to such land until submitted to and approved by the Secretary of the Interior or his duly authorized representative.

Although the Secretary of the Interior had received and acquiesced in the Corporation Commission's order of January 10, 1978, no formal approval of the order was given. However, upon learning of the oversight, the Acting Area Director of the BIA on May 7, 1981, sent a letter to the Corporation Commission approving its January 10, 1978, order (Appendix, *infra*). That action, although belated, fully satisfies the requirements of Section 11 of the Act of August 4, 1947, and, in our view, eliminates any arguable objection to the ruling below.

It may well be that, but for the Act of August 4, 1947, Oklahoma law could not reach the activities of lessees on restricted Choctaw lands—whether the obstacle be viewed as the Indian Commerce Clause, provisions of treaties with the Tribe, the special doctrine of federal preemption over Indian affairs, or the disclaimer provision in the Oklahoma Enabling Act (Act of June 16, 1906, ch. 3335, 34 Stat. 267-268), reproduced in the State Constitution. But it is no longer open to doubt that nothing prevents Congress from ceding to the State in which Indian lands are located the

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[2]The Area Director has been designated as the Secretary of the Interior's authorized representative. 25 C.F.R. 174.1. The regulations governing oil and gas leasing of restricted lands of members of the Five Civilized Tribes of Oklahoma are set forth at 25 C.F.R. 174.2 *et seq.*

whole or a part of its formerly exclusive jurisdiction and permitting the application of State law, administered by State tribunals. See, *e.g., Warren Trading Post* v. *Arizona Tax Commission*, 380 U.S. 685, 687 n.3 (1965). See also *Washington* v. *Yakima Indian Nation*, 439 U.S. 463 (1979). Here, albeit conditionally, there is an express delegation of authority to the State and the condition of federal approval for specific orders of the Corporation Commission has now been met. That is the end of the matter.[3]

In the circumstances, we suggest there is no issue that merits review by the Court.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

MAY 1981

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[3]Petitioners' reliance on 25 C.F.R. 1.4(a) to suggest that the Secretary of the Interior has precluded the application of state law to restricted Indian lands is misplaced. 25 C.F.R. 1.4(b) expressly recognizes the Secretary of the Interior's authority to apply state law where appropriate. This is such a case, since approval of the Corporation Commission's order would not undermine federal standards (see Pet. App. A para. 28), and no harm to the Indian landowner is apparent.

APPENDIX

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
MUSKOGEE AREA OFFICE
MUSKOGEE, OKLAHOMA 74401

May 7, 1981

State Corporation Commission
Conservation Division
Jim Thorpe Building
Oklahoma City, Oklahoma

Gentlemen:

Subject: Replugging of abandoned wells located on restricted properties belonging to Sophie Harrison, Choctaw 5567. Expired Lease No. 61604, covering the NW NE NW, NE NW NW; SE NW NW; SW NW NW of Section 10, T. 3 South, R. 5 West, Stephens County.

Order of the State Corporation Commission relative to replugging of abandoned wells located on certain of subject properties was entered in Case No. 137273 on January 10, 1978.

Notice of the hearing in this case was intially received by our office. A representative of this office, as well as a representative of the United States Geological Survey, were present at the hearing.

Although we consented to and accepted the Order of the State Corporation Commission of the State of Oklahoma, no formal approval was given. Therefore, this letter serves as official and formal approval of the Order of the Corporation Commission dated January 10, 1978, directing replugging abandoned wells on certain of the restricted properties described above. Approval is rendered in accordance with Section 11 of the Act of August 4, 1947 (61 Stat. 732).

Sincerely yours,

[s] [Alton R. Nordwall]
Acting Area Director

cc:

Tim Vollman
Assistant Solicitor
Division of Indian Affairs